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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE VINCE CHHABRIA

JEFFREY BERK, ON BEHALF OF HIMSELF)	
AND ALL OTHERS SIMILARLY SITUATED,)	
)	
PLAINTIFF,)	
)	
VS.)	NO. 18-CV-01364 VC
)	
COINBASE, INC., A DELAWARE)	
CORPORATION D/B/A GLOBAL DIGITAL)	
ASSET EXCHANGE ("GDAX"), BRIAN)	
ARMSTRONG AND DAVID FARMER,)	
)	SAN FRANCISCO, CALIFORNIA
DEFENDANTS.)	THURSDAY
)	SEPTEMBER 27, 2018
_____)	

TRANSCRIPT OF PROCEEDINGS OF THE OFFICIAL ELECTRONIC SOUND

RECORDING 10:31 A.M. - 12:13 P.M.

APPEARANCES:

FOR PLAINTIFF

THE GRANT LAW FIRM, PLLC
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BY: LYNDIA J. GRANT, ESQUIRE

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BY: ROBERT S. GREEN, ESQUIRE

**TRANSCRIBED BY: JOAN MARIE COLUMBINI, CSR #5435, RPR
RETIRED OFFICIAL COURT REPORTER, USDC**

APPEARANCES (CONTINUED) :

FOR DEFENDANTS

KEKER, VAN NEST & PETERS LLP
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BY: STEVEN P. RAGLAND, ESQUIRE
ERIN E. MEYER, ESQUIRE

1 THURSDAY, SEPTEMBER 27, 2018

10:31 A.M.

2 (TRANSCRIBER'S NOTE: DUE AT TIMES TO COUNSELS' FAILURE TO
3 IDENTIFY THEMSELVES WHEN SPEAKING, CERTAIN SPEAKER
4 ATTRIBUTIONS ARE BASED ON EDUCATED GUESS.)

5 ---000---

6 PROCEEDINGS

7 **THE CLERK:** CALLING CASE NO. 18-CV-1364 BERK VERSUS
8 COINBASE, INC., ET AL.

9 COUNSEL, PLEASE STEP FORWARD AND STATE YOUR
10 APPEARANCES FOR THE RECORD. AND, COUNSEL, BE SURE TO ADJUST
11 THE MICROPHONE SO IT'S DIRECTLY IN FRONT OF YOU.

12 **MR. GREEN:** GOOD MORNING, YOUR HONOR. ROBERT GREEN
13 FOR PLAINTIFFS.

14 **THE COURT:** GOOD MORNING.

15 **MS. GRANT:** GOOD MORNING, YOUR HONOR. LYNDIA GRANT
16 FOR PLAINTIFFS.

17 **THE COURT:** GOOD MORNING.

18 **MS. MEYER:** GOOD MORNING, YOUR HONOR, ERIN MEYER;
19 KECKER, VAN NEST & PETERS FOR DEFENDANT, ALL THREE DEFENDANTS.

20 **THE COURT:** GOOD MORNING.

21 **MR. RAGLAND:** GOOD MORNING, YOUR HONOR. STEVEN
22 RAGLAND, ALSO WITH KECKER, ALSO ON BEHALF OF COINBASE. WITH US
23 IS SARAH GAMBLIN, REPRESENTATIVE OF COINBASE.

24 FOR THIS ARGUMENT, MS. MEYER WILL BE HANDLING THE
25 ARBITRATION MOTION. I'LL BE HANDLING THE MOTION TO DISMISS.

1 **THE COURT:** OKAY. THAT SOUNDS GOOD.

2 AND ALTHOUGH ONE WOULD NORMALLY EXPECT US TO BEGIN BY
3 DISCUSSING THE ARBITRATION MOTION, I WOULD ACTUALLY LIKE TO
4 START BY DISCUSSING THE MOTION TO DISMISS, BECAUSE I THINK THAT
5 DISCUSSION MAY HELP ME DEVELOP A BETTER UNDERSTANDING OF THE
6 CLAIMS, WHICH MAY BETTER INFORM OUR DISCUSSION ON THE
7 ARBITRATION ISSUE AND WHETHER THOSE CLAIMS ARISE UNDER THE
8 CONTRACT.

9 SO, ON THE MOTION TO DISMISS, WHICH OF YOU WILL BE --
10 OR BOTH?

11 **MS. GRANT:** WELL, YOUR HONOR, I THINK DEPENDING ON
12 THE ISSUE, WE'VE SORT OF DIVIDED IT.

13 **THE COURT:** THAT'S FINE. YOU CAN TAG TEAM ME.

14 BUT THE THING ABOUT THIS -- LET ME LET YOU -- TAKE
15 YOUR TIME. TAKE YOUR TIME NO RUSH.

16 **MS. GRANT:** (INDISCERNIBLE.)

17 **THE COURT:** ONE OF THE LAWYERS GOT STUCK ON BART OR
18 SOMETHING LIKE THAT.

19 **MS. GRANT:** OKAY.

20 **THE COURT:** ALL SET?

21 **MS. GRANT:** YES. THANK YOU.

22 **THE COURT:** SO THIS, OBVIOUSLY, IS A -- IS A -- YOU
23 KNOW, KIND OF A BRAVE NEW WORLD THAT WE'RE DISCUSSING IN THIS
24 LAWSUIT, RIGHT? AND IT'S NOT A WORLD THAT I'M REMOTELY
25 FAMILIAR WITH. AND SO, WHAT I'M -- LET ME SEE IF I CAN SORT OF

1 LAY OUT THE STORY THAT YOU'RE TELLING IN THE COMPLAINT.

2 YOU HAVE COINBASE, WHICH IS THIS EXCHANGE ON WHICH
3 BITCOIN COULD BE TRADED. THERE WAS A DECISION AT SOME POINT TO
4 FORK THE BLOCK CHAIN -- IS THAT THE RIGHT WAY TO SAY IT?

5 **MS. GRANT:** OKAY. WE CAN GO WITH THAT.

6 **THE COURT:** NO. IF IT'S THE WRONG WAY TO SAY IT,
7 TELL ME.

8 **MS. GRANT:** NO, THERE WAS A FORK IN THE BITCOIN BLOCK
9 CHAIN, YES.

10 **THE COURT:** OKAY. SO THE SHADOWY GROUP OF PEOPLE WHO
11 ARE RESPONSIBLE FOR THE BITCOIN BLOCK CHAIN MADE A DECISION
12 THERE SHOULD BE A FORK IN THE BITCOIN BLOCK CHAIN, LEAVING US
13 WITH THE OLD BITCOIN BLOCK CHAIN AND THE NEW BITCOIN CASH BLOCK
14 CHAIN, RIGHT?

15 AND COINBASE INITIALLY STATED THAT IT WAS NOT GOING
16 TO SUPPORT TRADING IN BITCOIN CASH, I GATHER BECAUSE THERE WERE
17 CONCERNS ABOUT WHETHER THE TRANSACTIONS WERE SECURE OR WHETHER
18 THE FINANCES INVOLVED IN THOSE TRANSACTIONS WOULD BE SECURE, OR
19 SOMETHING ALONG THOSE LINES.

20 **MS. GRANT:** CORRECT.

21 **THE COURT:** RIGHT SO FAR?

22 **MS. GRANT:** YES.

23 **THE COURT:** OKAY. AND THEN AT SOME POINT COINBASE
24 MADE AN ANNOUNCEMENT THAT IN JANUARY -- I CAN'T REMEMBER WHAT
25 YEAR IT WAS, BUT IN JANUARY WE ARE GOING TO -- WE ARE GOING TO

1 SUPPORT COINBASE -- EXCUSE ME -- BITCOIN CASH, TO A DEGREE, BUT
2 IT WAS TO A LIMITED DEGREE. IT WAS JUST -- THE IDEA, I THINK,
3 WAS JUST THAT PEOPLE WERE GOING TO BE ABLE TO GET CASH FOR
4 THEIR BITCOIN CASH THROUGH COINBASE; IS THAT CORRECT?

5 **MS. GRANT:** WELL, THEY WOULD BE ABLE TO WITHDRAW
6 THEIR COINS.

7 **THE COURT:** WITHDRAW THEIR COINS.

8 **MS. GRANT:** CORRECT.

9 **THE COURT:** THEIR BITCOIN CASH?

10 **MS. GRANT:** THAT'S CORRECT. SO THAT'S JUST
11 WITHDRAWALS, NOT TRADING.

12 **THE COURT:** GOT IT. JUST WITHDRAWALS.

13 SO -- SO BEFORE THAT TIME, EVEN THOUGH THE BLOCK
14 CHAIN HAD FORKED AND PEOPLE WHO HAD THEIR BITCOIN IN COINBASE
15 NOW HAD BITCOIN CASH IN COINBASE, COINBASE WAS NOT ALLOWING
16 PEOPLE TO GET -- TO WITHDRAW THEIR BITCOIN CASH, AND THEN THEY
17 ANNOUNCED THEY WOULD START ALLOWING PEOPLE TO WITHDRAW THEIR
18 BITCOIN CASH IN JANUARY; IS THAT RIGHT?

19 **MS. GRANT:** THAT IS TRUE, YOUR HONOR.

20 **THE COURT:** AND THAT --

21 **MS. GRANT:** THERE'S ANOTHER ASPECT ALSO. THAT IS
22 SOME OF THE --

23 **THE COURT:** THAT'S TRUE SO FAR?

24 **MS. GRANT:** YES, BUT THAT'S JUST PART OF THE CLASS.
25 I MEAN, TO BE HONEST, THERE WERE PEOPLE LIKE --

1 **THE COURT:** WELL, THAT'S PART OF THE CLASS, BUT
2 THAT'S NOT -- THAT'S -- TO A LAY PERSON LIKE ME THAT SEEMS
3 RATHER REMARKABLE, RIGHT?

4 **MS. GRANT:** YES.

5 **THE COURT:** THAT COINBASE WOULD SAY, OKAY, YOU'RE --
6 TO USE, I GUESS, A ROUGH ANALOGY: YOUR BITCOIN STOCK HAS SPLIT
7 INTO, YOU KNOW, HALF BITCOIN SHARES AND HALF BITCOIN CASH
8 SHARES, AND YOU ARE NOT GOING TO HAVE THE ABILITY TO WITHDRAW
9 YOUR BITCOIN CASH SHARES FROM OUR EXCHANGE, TO USE A ROUGH
10 ANALOGY. THAT SEEMS RATHER REMARKABLE TO ME IF THE ANALOGY I'M
11 DRAWING IS CORRECT, AND MAYBE IT'S NOT, BUT THAT'S NOT YOUR
12 LAWSUIT, RIGHT?

13 **MS. GRANT:** THAT'S PART OF IT.

14 **THE COURT:** YOU ARE NOT -- BUT YOU DON'T HAVE A CLAIM
15 BASED ON THAT? YOU DON'T HAVE A CLAIM THAT SAYS: THEY DIDN'T
16 LET US WITHDRAW OUR BITCOIN CASH AND WE ARE DAMAGED BY THAT.

17 **MS. GRANT:** THAT IS -- WE DO NOT HAVE A SEPARATE
18 CLAIM ON THAT.

19 **THE COURT:** YOU TAKE THEM TO TASK --

20 **MS. GRANT:** YES.

21 **THE COURT:** -- IN YOUR COMPLAINT FOR DOING THAT, BUT
22 IT'S REALLY JUST KIND OF ATMOSPHERICS, RIGHT, YOU DON'T HAVE A
23 CLAIM BASED ON IT?

24 **MS. GRANT:** THAT IS TRUE, ALTHOUGH IT'S A LITTLE BIT
25 MORE THAN ATMOSPHERICS BECAUSE IT GOES TO THE COMMODITIES

1 CLAIM, WHICH I DON'T WANT TO GET INTO UNTIL THE COURT WANTS TO
2 DISCUSS IT, BUT THERE WAS A WHOLE ISSUE WHETHER THERE WAS A
3 SWAP TRANSACTION, IT'S A FORWARD CONTRACT, IT'S A FUTURES
4 CONTRACT, AND THE CONTROL BY THE CUSTOMERS OVER THEIR COINS IS
5 AN ISSUE.

6 **THE COURT:** RIGHT, BUT -- I UNDERSTAND WHERE YOU'RE
7 GOING WITH THAT, BUT JUST TO FINISH LAYING OUT --

8 **MS. GRANT:** SURE.

9 **THE COURT:** -- THE CONDUCT THAT YOU'RE COMPLAINING
10 OF, YOU DO NOT HAVE A CLAIM BASED ON COINBASE'S ANNOUNCEMENT
11 THAT IT'S NOT GOING TO ALLOW PEOPLE TO WITHDRAW BITCOIN CASH
12 FROM THE EXCHANGE?

13 **MS. GRANT:** THAT'S CORRECT.

14 **THE COURT:** OKAY. SO WHAT YOU'RE COMPLAINING ABOUT
15 HAPPENS A LITTLE BIT LATER, RIGHT? SO IN -- SO COINBASE HAD
16 PREVIOUSLY ANNOUNCED THAT IN JANUARY PEOPLE WERE GOING TO BE
17 ABLE TO START WITHDRAWING BITCOIN CASH, AND -- BUT IN AROUND
18 NOVEMBER, MID NOVEMBER, BITCOIN -- COINBASE DECIDED INTERNALLY
19 THAT IT WOULD NOT ONLY ALLOW PEOPLE TO WITHDRAW BITCOIN CASH,
20 BUT IT WOULD ACTUALLY BEGIN SUPPORTING TRADING IN BITCOIN CASH
21 ON THE EXCHANGE?

22 **MS. GRANT:** CORRECT.

23 **THE COURT:** SO THEY BEGAN THE PREPARATIONS IN
24 NOVEMBER TO FACILITATE AND SUPPORT TRADING -- FULL TRADING IN
25 BITCOIN CASH ON THE EXCHANGE.

1 **MS. GRANT:** SURE.

2 **THE COURT:** AND THEN IN MID DECEMBER, SOMETIME IN
3 DECEMBER, DECEMBER.

4 **MS. GRANT:** DECEMBER 19TH, YES.

5 **THE COURT:** THEY ANNOUNCED AT, LIKE, 4:00 P.M.
6 THAT -- AND THIS WAS THE FIRST PUBLIC ANNOUNCEMENT. THIS WAS
7 THE FIRST PUBLIC STATEMENT IN THIS REGARD.

8 **MS. GRANT:** CORRECT.

9 **THE COURT:** THEY ANNOUNCED THAT THEY WERE GOING TO
10 SUPPORT TRADING IN BITCOIN CASH, AND THEY ANNOUNCED THAT
11 TRADING WAS GOING TO BEGIN AT, LIKE, 5:30; IS THAT RIGHT.

12 **MS. GRANT:** RIGHT.

13 **THE COURT:** AND TRADING BEGAN AT 5:30. THE PRICE OF
14 BITCOIN CASH SHOT UP VERY QUICKLY AND VERY FAR, AND THEN, LIKE,
15 TWO MINUTES LATER THEY STOPPED TRADING?

16 **MS. GRANT:** CORRECT.

17 **THE COURT:** AND THEY -- AND PEOPLE WHO PUT IN THEIR
18 ORDERS FOR BITCOIN CASH DIDN'T -- THEY MIGHT HAVE PUT IN THEIR
19 ORDER AT -- WHEN BITCOIN CASH WAS AT 2,000 OR 4,000, BUT THEIR
20 ORDERS DIDN'T COME -- THE ORDER WAS FILLED AT 16,000 OR
21 12,000 --

22 **MS. GRANT:** RIGHT.

23 **THE COURT:** -- OR SOMETHING LIKE THAT, SO THEY GOT A
24 LOT MORE BITCOIN CASH FOR THEIR REAL CASH THAN THEY
25 ANTICIPATED.

1 **MS. GRANT:** AND ALSO DIFFERENT THAN THE PRICE THAT
2 WAS QUOTED TO THEM.

3 **THE COURT:** AND DIFFERENT THAN THE PRICE THAT WAS
4 QUOTED TO THEM, AND YOU HAVE SOME ALLEGATIONS ABOUT HOW THERE
5 WAS AN OPPORTUNITY, APPARENTLY, TO CANCEL, BUT YOU HAVE SOME
6 ALLEGATIONS THAT THE CANCEL BUTTON WASN'T WORKING FOR AT LEAST
7 PART OF THE TIME. OKAY.

8 SO TO ME -- AND THESE MAY BE DUMB QUESTIONS BY THE
9 WAY, QUESTIONS OF A LAY PERSON.

10 **MS. GRANT:** NO QUESTION --

11 **THE COURT:** SOMEBODY WHO DOESN'T UNDERSTAND ENOUGH
12 ABOUT HOW THIS SYSTEM WORKS.

13 **MS. GRANT:** RIGHT.

14 **THE COURT:** BUT ONE QUESTION I HAVE FOR YOU IS: HOW
15 SHOULD COINBASE HAVE DONE THIS? HOW SHOULD COINBASE HAVE
16 ROLLED THIS OUT AND HOW SHOULD COINBASE HAVE EXECUTED THIS TO
17 AVOID THE PROBLEMS THAT OCCURRED?

18 **MS. GRANT:** WELL, THERE ARE MULTIPLE ISSUES, YOUR
19 HONOR, AND THE COURT HAS GOTTEN THE STORY PRETTY MUCH CORRECT,
20 BUT THERE ARE A FEW OTHER ISSUES.

21 **THE COURT:** OKAY.

22 **MS. GRANT:** LIKE THE FACT THAT THERE WAS INSIDER
23 TRADING THAT COINBASE WAS AWARE OF PRIOR TO ITS -- WHAT WE CALL
24 THE LAUNCH OF BCH, WHEN IT DECIDED TO --

25 **THE COURT:** WELL, YOU DON'T ALLEGE -- IF I REMEMBER

1 CORRECTLY, YOU DON'T ALLEGE IN YOUR COMPLAINT THAT THERE WAS
2 INSIDER TRADING THAT COINBASE WAS AWARE OF. IF I RECALL
3 CORRECTLY -- AND POINT ME TO THE PART OF YOUR COMPLAINT IF I'M
4 MISSING IT -- BUT MY RECOLLECTION IS YOU ALLEGE THAT THERE WAS
5 A SPIKE IN BITCOIN CASH PURCHASES RIGHT AROUND THE TIME THAT
6 COINBASE MADE THE DECISION TO SUPPORT BITCOIN CASH TRADING, AND
7 THEREFORE, THERE MUST HAVE BEEN INSIDER TRADING. BUT YOU DON'T
8 HAVE ANY ALLEGATIONS, IF I -- IF I REMEMBER CORRECTLY, YOU
9 DON'T HAVE ALLEGATIONS THAT THE BITCOIN EXECUTIVES KNEW THAT
10 INSIDER TRADING WAS GOING ON, AND YOU DON'T ACTUALLY HAVE
11 ALLEGATIONS THAT THERE DEFINITELY WAS INSIDER TRADING GOING ON;
12 YOU JUST SAY THERE MUST HAVE BEEN GIVEN THE PATTERN, WHICH I
13 SORT OF AGREE WITH YOU, THERE PROBABLY -- IT SEEMS LIKE THERE
14 PROBABLY WAS INSIDER TRADING.

15 **MS. GRANT:** YES. AND, VERY INTERESTING, YOUR HONOR,
16 THE NEW YORK ATTORNEY GENERAL, WHO FOR POLITICAL REASONS HAS
17 JUST SWITCHED, HAS JUST COME OUT WITH A REPORT IN WHICH THEY
18 INDICATE, BASED UPON QUESTIONNAIRES THAT HAVE GONE TO SOME OF
19 THE TOP CRYPTO CURRENCY PLATFORMS, INCLUDING COINBASE, THAT, IN
20 FACT, THERE WAS SIGNIFICANT INSIDER TRADING IN ALL OF THESE
21 PLATFORMS, INCLUDING COINBASE AND --

22 **THE COURT:** OKAY. BUT I'M MORE CONCERNED -- THAT
23 KIND OF DISCUSSION MAY BE RELEVANT TO A REQUEST TO AMEND THE
24 COMPLAINT.

25 **MS. GRANT:** OKAY.

1 **THE COURT:** BUT I'M MORE CONCERNED RIGHT NOW WITH
2 WHAT'S IN THE COMPLAINT.

3 **MS. GRANT:** YEAH, I THINK THAT WE DO ALLEGE --

4 **THE COURT:** WHERE?

5 **MS. GRANT:** -- THAT THERE'S INSIDER TRADING.

6 WELL, I'M LOOKING AT PARAGRAPH 12 WHERE WE SAY THE
7 WHOLE PURPOSE OF -- I MEAN, THE WHOLE THEORY OF THE CASE
8 BASICALLY IS COINBASE TIPPED THEIR INSIDERS, THEY DIDN'T
9 MONITOR THEM, THEY KNEW FROM THE START --

10 **THE COURT:** WHERE -- SO SHOW ME THE LANGUAGE IN
11 PARAGRAPH 12 THAT YOU'RE TALKING ABOUT SAYS COINBASE KNEW THERE
12 WAS INSIDER TRADING.

13 **MS. GRANT:** (AS READ.)

14 "COINBASE INSIDERS WERE ABLE TO
15 SELL INTO THIS MANIPULATED MARKET AT PRICES
16 FAR ABOVE THOSE IN OTHER EXCHANGES THAT
17 REFLECTED AN UNMANIPULATED SUPPLY AND
18 DEMAND."

19 AND I KNOW THERE ARE NUMEROUS ALLEGATIONS ALONG THOSE
20 LINES. I DON'T WANT TO TAKE THE COURT'S TIME TO SIT HERE AND
21 LOOK AT THEM, BUT THERE'S CERTAINLY --

22 **THE COURT:** BUT THIS SAYS THAT COINBASE INSIDERS WERE
23 ABLE TO SELL INTO THIS MANIPULATED MARKET, BUT IT DOESN'T -- IT
24 DOESN'T QUITE SAY THAT THERE WAS -- I MEAN, MAYBE THAT -- MAYBE
25 THAT IS THE EQUIVALENT OF SAYING THAT THERE WAS INSIDER

1 TRADING, BUT IT DOESN'T QUITE GO SO FAR AS TO SAY THAT COINBASE
2 KNEW THERE WAS INSIDER TRADING OR THAT THE PURPOSE -- I MEAN,
3 ONE OF THE THINGS -- JUST TO TAKE A QUICK STEP BACK, ONE OF THE
4 THINGS I'M TRYING TO UNDERSTAND IS WHY DID COINBASE DO IT THE
5 WAY THEY DID IT.

6 **MS. GRANT:** OKAY.

7 **THE COURT:** AND HOW SHOULD THEY HAVE DONE IT IF THEY
8 WERE CONDUCTING THEMSELVES PROPERLY?

9 AND I -- AND I DON'T HAVE A GOOD UNDERSTANDING OF
10 EITHER OF THOSE TWO QUESTIONS FROM YOUR COMPLAINT OR FROM THE
11 BRIEFS. EITHER WHY -- WHY DID COINBASE DO IT THE WAY IT DID
12 IT, HOW DID THAT BENEFIT COINBASE TO DO IT THAT WAY? I DON'T
13 UNDERSTAND -- I DON'T HAVE A GOOD UNDERSTANDING OF THAT FROM
14 THE ALLEGATIONS IN YOUR COMPLAINT.

15 AND HOW SHOULD COINBASE HAVE DONE IT? LIKE, WHAT'S
16 THE SIDE-BY-SIDE COMPARISON OF THE BUNGLING THAT YOU
17 DESCRIBED -- OR MAYBE "BUNGLING" IS THE WRONG WORD BECAUSE IT
18 DOESN'T HAVE A NEFARIOUS CONNOTATION, BUT WHAT'S THE
19 SIDE-BY-SIDE COMPARISON OF WHAT YOU DESCRIBE HAPPENED AND WHAT
20 SHOULD HAVE BEEN HAPPENED?

21 **MS. GRANT:** WELL, FIRST OF ALL, COINBASE PUT UP A
22 FALSE AND MISLEADING STATEMENT ABOUT WHEN IT WAS GOING TO
23 SUPPORT THIS. WHEN IT KNEW AND HAD MADE A DECISION THAT IT WAS
24 GOING TO SUPPORT THIS, IT SHOULD HAVE PUBLICLY ANNOUNCED.
25 INSTEAD IT JUST TOLD IT TO INTERNAL PEOPLE.

1 **THE COURT:** AND WHY -- WHY -- I MEAN, AGAIN, THAT'S
2 AN IGNORANT QUESTION, BUT WHY SHOULD THEY HAVE PUBLICLY
3 ANNOUNCED ONCE THEY DECIDED THAT THEY WERE GOING TO SUPPORT
4 TRADING IN BITCOIN CASH?

5 **MS. GRANT:** WELL, THAT COMES WITH AN UNDERSTANDING OF
6 WHAT THIS MARKET IS LIKE. THERE ARE NOT A LOT OF PLACES TO
7 TRADE. THERE ARE ONLY A HANDFUL OF PLATFORMS. COINBASE IS THE
8 LARGEST PLATFORM AND ONE OF THE FEW THAT TAKES FIAT CURRENCY,
9 MEANING --

10 **THE COURT:** OKAY.

11 **MS. GRANT:** I MEAN, I HAVE A COINBASE ACCOUNT. MAYBE
12 I SHOULDN'T TELL DEFENDANTS THAT.

13 **THE COURT:** WHY?

14 **MS. GRANT:** WHY?

15 **THE COURT:** YEAH.

16 **MS. GRANT:** BECAUSE I THOUGHT ABOUT TRADING CRYPTO
17 MYSELF.

18 AND THEY'RE ONE OF THE FEW AND I THINK THE FIRST TO
19 TAKE -- YOU CAN SIGN UP WITH YOUR BANK ACCOUNT. SO THAT'S THE
20 ONLY PLACE WHERE RETAIL INVESTORS CAN GO.

21 **THE COURT:** OKAY.

22 **MS. GRANT:** IT'S NOT LIKE YOU CAN GO TO A LOT OF
23 DIFFERENT OTHER PLATFORMS -- NOW, MAYBE NOW THAT WE'RE ARGUING
24 THIS MOTION, THERE ARE MORE PLATFORMS, BUT WE'RE TALKING ABOUT
25 ALMOST A YEAR AGO. THERE WERE FAR FEWER PLATFORMS --

1 **THE COURT:** OKAY.

2 **MS. GRANT:** AND THEY --

3 **THE COURT:** THERE WERE FEWER -- THERE WERE FEWER
4 PLATFORMS?

5 **MS. GRANT:** RIGHT.

6 **THE COURT:** AND, THEREFORE, THAT MEANS IF THEY
7 WERE --

8 **MS. GRANT:** IF YOU WERE GOING TO MAKE A CHANGE -- I'M
9 SORRY TO TALK OVER YOU.

10 IF YOU'RE GOING TO MAKE A CHANGE AND SUDDENLY START
11 TO SUPPORT BCH, THESE PEOPLE NEED TO KNOW THAT AND MAKE A
12 DECISION WHETHER THEY WANT TO SAY ON YOUR PLATFORM, GO TO
13 ANOTHER PLATFORM, DO THEY NEED TO GO TO ANOTHER PLATFORM TO
14 DECIDE THEIR TRADING STRATEGIES --

15 **THE COURT:** BUT THAT'S NOT WHAT YOU COMPLAIN ABOUT IN
16 THE LAWSUIT. THAT'S NOT THE INJURY YOU COMPLAIN ABOUT IN THE
17 LAWSUIT, IS IT? I MEAN, YOU'RE NOT COMPLAINING THAT THE
18 FAILURE TO DISCLOSE UNTIL THE LAST MINUTE THAT COINBASE WAS
19 GOING TO SUPPORT TRADING IN BITCOIN CASH PREVENTED COINBASE
20 USERS FROM ASSESSING WHETHER THEY WANTED TO STAY IN THAT MARKET
21 OR GO INTO A DIFFERENT MARKET. YOU'RE COMPLAINING THAT THE
22 PEOPLE WHO TRIED TO BUY BITCOIN CASH IN DECEMBER SOMEHOW GOT
23 THE SHORT END OF THE STICK, AND YOU SEEM TO BE SAYING THAT IF
24 COINBASE HAD DISCLOSED WELL IN ADVANCE THAT IT WAS BEGINNING
25 PREPARATIONS TO SUPPORT TRADING AND IT -- IN BITCOIN CASH, IF

1 COINBASE HAD ANNOUNCED THAT WELL IN ADVANCE AND ANNOUNCED A
2 DATE WELL IN ADVANCE WHEN IT WAS GOING TO START, THEN PEOPLE
3 LIKE YOUR CLIENT WOULDN'T HAVE BEEN INJURED IN THE WAY THAT HE
4 WAS INJURED.

5 BUT I GUESS I'M NOT -- BECAUSE THAT'S NOT EXPLAINED
6 IN THE COMPLAINT, I'M NOT -- I DON'T UNDERSTAND IT. IT SEEMS
7 TO BE AN ASSUMPTION, A BACKGROUND ASSUMPTION, THAT YOU'RE
8 MAKING, BUT YOU DON'T EXPLAIN WHY THAT'S IN THE COMPLAINT, OR
9 IN YOUR OPPOSITION BRIEF WHY THAT'S THE CASE, AND SO I'M HAVING
10 TROUBLE UNDERSTANDING.

11 **MS. GRANT:** WELL, I THINK YOU HAVE TO LOOK AT IT
12 HOLISTICALLY, WHICH IS WHAT HAPPENED, WHICH IS THEY TIPPED
13 THEIR INSIDERS -- WE KNOW THERE WAS A SPIKE. THE VERY WEEKEND
14 THAT THEY TIPPED THEIR INSIDERS, THERE'S A SPIKE IN THE TRADING
15 OF THESE --

16 **THE COURT:** WHEN YOU SAY --

17 **MS. GRANT:** YEAH.

18 **THE COURT:** WHEN YOU SAY THEY TIPPED THEIR
19 INSIDERS --

20 **MS. GRANT:** RIGHT.

21 **THE COURT:** I MEAN, WHAT YOU REALLY MEAN BY THAT IS
22 THEY BEGAN MAKING PREPARATIONS TO SUPPORT TRADING IN BITCOIN
23 CASH.

24 **MS. GRANT:** THAT IS CORRECT.

25 **THE COURT:** OKAY.

1 **MS. GRANT:** (INDISCERNIBLE.)

2 **THE COURT:** SO, YOU KNOW, YOUR USE OF THE WORDS
3 "TIPPED THEIR INSIDERS" MAKES IT SOUND LIKE YOU ARE ACCUSING
4 THEM OF GIVING THEM INSIDER INFORMATION WHICH THOSE PEOPLE CAN
5 THEN USE TO ILLEGALLY MAKE A PROFIT.

6 BUT REALLY ALL YOU'VE SAID IN YOUR COMPLAINT IS THAT
7 THEY BEGAN MAKING PREPARATIONS TO SUPPORT FULL TRADING IN
8 BITCOIN CASH ON THE COINBASE EXCHANGE IN MID NOVEMBER, AND, AS
9 A RESULT, BITCOIN -- EXCUSE ME -- COINBASE PEOPLE WERE AWARE OF
10 IT AND COINBASE PEOPLE STARTED TRADING ON OTHER EXCHANGES,
11 BUYING UP BITCOIN CASH, RIGHT?

12 **MS. GRANT:** WELL, IF I FOLLOW ALL OF THAT --

13 **THE COURT:** I'M SORRY. I KEEP BOUNCING -- I MIGHT
14 BE -- I OFTEN ACCIDENTLY SAY "BITCOIN" WHEN I MEAN COINBASE.

15 **MS. GRANT:** OH, NO --

16 **THE COURT:** I APOLOGIZE IF I'VE BEEN UNCLEAR.

17 **MS. GRANT:** THAT'S FINE.

18 THEY TELL THEIR EMPLOYEES -- FIRST OF ALL, THEY KNOW
19 THAT THEIR EMPLOYEES ARE TRADING, OKAY? THEY'RE TRADING
20 AGAINST THEIR CUSTOMERS, AND I THINK THAT COINBASE ALSO TRADES
21 AGAINST ITS CUSTOMERS IF YOU READ AG'S REPORT.

22 **THE COURT:** WELL, BUT WHERE'S THAT IN THE -- I WANT
23 TO TRY TO FOCUS --

24 **MS. GRANT:** OKAY. THAT IS NOT IN THE --

25 (SIMULTANEOUS COLLOQUY.)

1 **THE COURT:** I WANT TO TRY TO FOCUS ON WHAT'S IN THE
2 COMPLAINT NOW, BECAUSE MY JOB IS TO DECIDE WHETHER THIS
3 COMPLAINT STATES A CLAIM FOR NEGLIGENCE AND VIOLATION AND
4 UNFAIR BUSINESS PRACTICES.

5 **MS. GRANT:** RIGHT.

6 **THE COURT:** AND ALL THAT.

7 **MS. GRANT:** AND IT'S AN UNFAIR BUSINESS PRACTICE
8 BECAUSE YOU ARE TIPPING YOUR INSIDERS -- YOU'RE NOT MONITORING
9 THEM, YOU ALLOW THEM TO BUY BCH ON THE CHEAP ON OTHER
10 EXCHANGES, AND THEN THEY KNOW THE EXACT TIME AND DATE THAT THIS
11 THING IS GOING TO START TRADING AT FULL SUPPORT.

12 **THE COURT:** OKAY.

13 **MS. GRANT:** THE CUSTOMERS DON'T KNOW THAT. I MEAN,
14 20 MILLION CUSTOMERS DON'T KNOW THAT, BUT THE INSIDERS KNOW IT.
15 THEY SAY THEN, OKAY, WE'RE GOING TO HAVE IT IN POST-ONLY MODE,
16 THAT YOU CAN JUST POST YOUR TRADES.

17 **THE COURT:** WHAT DOES THAT MEAN, BY THE WAY?

18 **MS. GRANT:** THAT MEANS YOU JUST POST THE TRADES BUT
19 IT'S NOT OPEN FOR FULL TRADING.

20 SO THAT DAY THEY SAY, WE'RE GOING TO POST-ONLY MODE
21 AND WHEN THERE'S ENOUGH LIQUIDITY, WE'RE GOING TO GO TO FULL
22 TRADING, WHICH THEY WENT TO, I THINK, WITHIN AN HOUR.

23 **THE COURT:** AGAIN, THIS IS ANOTHER EXAMPLE OF YOU
24 PRESUMING TOO MUCH KNOWLEDGE --

25 **MS. GRANT:** OKAY.

1 **THE COURT:** -- ON THE PART OF THE READER OF THE
2 COMPLAINT, RIGHT? BOTH IN THIS DISCUSSION WE'RE HAVING HERE
3 AND WHAT YOU HAVE WRITTEN IN THE COMPLAINT, BECAUSE I DIDN'T
4 REALLY UNDERSTAND WHAT YOU JUST SAID.

5 **MS. GRANT:** THE SHORT OF IT IS THIS: IT'S LIKE
6 INSIDERS TRADING -- I UNDERSTAND WE DON'T HAVE AN INSIDER
7 TRADING CLAIM. AND PART OF THE PROBLEM IS, LIKE THE GENTLEMAN
8 WHO JUST ARGUED THE TOYOTA CASE, IT --

9 **THE COURT:** SORRY? WHAT?

10 **MS. GRANT:** LIKE THE GENTLEMAN WHO JUST ARGUED THE
11 TOYOTA CASE, SOME OF IT NEEDS A LITTLE BIT FURTHER
12 INVESTIGATION.

13 **THE COURT:** WELL, BUT THE PROBLEM IS WE DON'T KNOW,
14 RIGHT? WOULD WE EVER BE ABLE TO FIND OUT IF THERE'S INSIDER
15 TRADING?

16 **MS. GRANT:** OH, SURE.

17 **THE COURT:** I MEAN, I THOUGHT THE POINT WAS YOU'RE
18 NOT SUPPOSED TO BE ABLE TO KNOW WHO'S BUYING AND SELLING THIS
19 STUFF.

20 **MS. GRANT:** WHEN YOU OPEN A COINBASE ACCOUNT, YOU
21 HAVE TO GIVE THEM A LOT OF INFORMATION, AND MY UNDERSTANDING IS
22 THEY HAVE YOUR IP ADDRESS. I THINK THEY HAVE MY IP ADDRESS
23 BECAUSE I CAN'T EVEN GET INTO MY ACCOUNT, SO --

24 **THE COURT:** BUT --

25 **MS. GRANT:** -- SO THEY CAN SEE WHO TRADES.

1 **THE COURT:** BUT THE TRADING THAT YOU'RE TALKING ABOUT
2 THAT OCCURRED IN NOVEMBER WAS TRADING ON OTHER EXCHANGES,
3 RIGHT?

4 **MS. GRANT:** THAT IS CORRECT, BECAUSE COINBASE HAD NO
5 (INDISCERNIBLE). SO WHAT THE INSIDERS WERE DOING WAS BUYING ON
6 THE CHEAP -- IT'S JUST LIKE INSIDER TRADING, RIGHT? BY BUYING
7 ON THE CHEAP, THEY SPIKE IT DOWN. COINBASE IS AWARE OF THIS.
8 THIS IS ON THE BLOCK CHAIN, RIGHT? SO COINBASE CAN SEE THAT
9 THE PRICE IS SPIKING. IT DOESN'T -- IT KNOWS IT JUST INFORMED
10 ITS INSIDERS OF THE DATE WHEN IT'S GOING TO LAUNCH THE WHOLE
11 THING. IT DOESN'T DO ANYTHING. IT THEN, THAT DAY, SUDDENLY ON
12 DECEMBER 19TH, AFTER THAT MORNING TELLING THE PUBLIC WE'RE NOT
13 READY TO SUPPORT THIS, SUDDENLY SAYS, OOPS, GUESS WHAT, WE'RE
14 GOING TO FULLY SUPPORT THIS.

15 **THE COURT:** IN AN HOUR AND A HALF.

16 **MS. GRANT:** IN AN HOUR AND A HALF, BUT FIRST WE'RE
17 GOING TO GO TO POST-ONLY MODE. IT SEES -- AND I KNOW WE HAVE
18 THE SCREEN SHOTS IN THE COMPLAINT -- THE PRICE IS GOING UP AND
19 UP, 9,000 -- IT HIT UP TO 16,000. THERE'S YOUTUBE VIDEOS WE
20 WERE GOING TO BRING INTO THE COURT, BUT WE DIDN'T, WHICH SHOW
21 PEOPLE JUST MIND BOGGLED, BLOWN AWAY, BY WHAT'S GOING ON WITH
22 THIS PRICE.

23 NO OTHER -- A FEW OTHER PLATFORMS HAVE PRICES AT THIS
24 LEVEL. AND INSTEAD OF SAYING, OH, WOW, WE'VE GOT AN ORDER BOOK
25 IMBALANCE, WE'VE GOT TOO MANY PEOPLE --

1 **THE COURT:** WHAT DOES THAT MEAN, ORDER BOOK -- I
2 STILL DON'T KNOW WHAT POST-ONLY MODE IS EXACTLY, AND I DON'T --
3 I DON'T -- I GATHER WHEN YOU SAY "ORDER BOOK IMBALANCE," YOU'RE
4 SAYING THEY'RE LOOKING AT IT AND THEY'RE SAYING FAR MORE PEOPLE
5 WANT TO BUY THAN WANT TO SELL, BUT I DON'T -- THERE'S NO
6 EXPLANATION --

7 **MS. GRANT:** THERE'S NOT ENOUGH LIQUIDITY, CORRECT.

8 **THE COURT:** THERE'S NO EXPLANATION IN THE COMPLAINT
9 OF WHAT THAT MEANS OR WHY IT MATTERS OR WHY IT -- WHY WE SHOULD
10 CONSIDER IT AS AMOUNTING TO WRONGDOING ON THE PART OF COINBASE.
11 THAT'S THE PART I DON'T UNDERSTAND.

12 **MS. GRANT:** WELL, THE QUESTION IS HERE: WAS THE
13 PRICE MANIPULATED? YOU'VE GOT YOUR INSIDERS. THEY'VE PUSHED
14 THE PRICE UP BECAUSE THEY HAD INSIDER KNOWLEDGE. YOU SEE IT IN
15 YOUR ORDER BOOK, RIGHT? YOU'VE GOT A PUBLIC ORDER BOOK. YOU
16 CAN SEE IT.

17 FIRST YOU JUST POST THE TRANSACTIONS AND, PRESUMABLY,
18 WHEN THERE'S MORE LIQUIDITY, THEN YOU GO TO FULL TRADING. SO
19 THEY'RE JUST POSTING -- THEY'RE NOT TRADING. THEY'RE JUST
20 POSTING. THE PRICE IS GOING UP AND UP AND UP, BUT TO
21 ASTRONOMICAL, MIND-BOGGLING RATES.

22 SO INSTEAD OF SAYING, YOU KNOW WHAT, WE CAN'T OPEN
23 THE BOOK, WE ARE GOING TO HAVE AN ORDER BOOK IMBALANCE AND WE
24 DON'T KNOW WHO'S PUSHING UP THE PRICE OF BCH, BECAUSE NO PLACE
25 ELSE IS IT TRADING AT THAT PRICE, THEY OPEN THE BOOK. AND WHAT

1 DO THEY DO, THEY OPEN THE BOOK, AND, AS FAR AS WE KNOW AT THIS
2 JUNCTURE, IT'S EVERYBODY, ALL THE INSIDERS DUMP THEIR STOCK --
3 IT'S LIKE A PUMP AND DUMP -- DUMP THEIR STOCKS. AND JUST
4 MINUTES LATER THEY CLOSE IT DOWN, GOING, ORDER BOOK IMBALANCE,
5 WE'RE CLOSING EVERYTHING DOWN.

6 **THE COURT:** SO IS -- ARE YOU SAYING, ESSENTIALLY,
7 THAT THE WAY THAT COINBASE HANDLED THIS ROLL OUT FACILITATED A
8 PUMP AND DUMP --

9 **MS. GRANT:** YES.

10 **THE COURT:** -- THAT COINBASE SHOULD HAVE KNOWN WAS
11 GOING TO HAPPEN, OR DID KNOW WAS HAPPENING, OR IS THAT -- IS
12 THAT THE WAY TO UNDERSTAND IT?

13 **MS. GRANT:** THAT IS THE CLAIM, YES, THAT IT REALLY
14 WAS COINBASE FACILITATING A PUMP AND DUMP AND POSSIBLY ITSELF
15 ENGAGING IN PROPRIETARY TRADING AGAINST ITS OWN CUSTOMERS,
16 ALTHOUGH I WILL ADMIT THAT IS NOT -- I'M NOT EVEN SURE IF IT'S
17 INFERRED IN THE COMPLAINT BECAUSE IT'S INFORMATION THAT WE'VE
18 JUST GOTTEN FROM THE NEW YORK AG.

19 **THE COURT:** OKAY. AND SO THE WAY THEY SHOULD HAVE
20 DONE IT WAS ANNOUNCED -- I MEAN, THERE ALWAYS WOULD HAVE
21 BEEN -- THERE WAS GOING TO BE -- INEVITABLY, THERE WAS GOING TO
22 BE A PERIOD BETWEEN THE TIME THEY DECIDED TO SUPPORT TRADING IN
23 BITCOIN CASH AND THE TIME THEY PUBLICLY ANNOUNCED IT, AND THERE
24 WAS GOING TO BE A PERIOD WHERE EMPLOYEES KNEW ABOUT IT AND THE
25 PUBLIC DIDN'T KNOW ABOUT IT.

1 BUT WHAT YOU'RE SAYING THEY SHOULD HAVE DONE IS
2 ANNOUNCED IN NOVEMBER, LATE NOVEMBER LET'S SAY JUST
3 HYPOTHETICALLY: WE ARE BEGINNING PREPARATION TO SUPPORT
4 TRADING IN BITCOIN CASH; WE'RE GOING TO ANNOUNCE A DATE AT SOME
5 POINT, AND THEN THEY SHOULD HAVE ANNOUNCED THE DATE THAT THEY
6 WERE GOING TO START SUPPORTING TRADING IN BITCOIN CASH, AND THE
7 ANNOUNCEMENT SHOULD HAVE TAKEN PLACE FAR LONGER THAN AN HOUR
8 AND A HALF --

9 MS. GRANT: YES.

10 THE COURT: -- BEFORE TRADING BEGAN. AND BY DOING IT
11 THE WAY THEY DID IT, AS OPPOSED TO THE WAY I'M NOW DESCRIBING
12 IT, THAT FACILITATED -- OR MADE IT LIKELY THAT THERE WAS GOING
13 TO BE THIS DRAMATIC SPIKE IN THE VALUE OF BITCOIN CASH THAT WAS
14 GOING TO FORCE THEM TO SHUT DOWN TRADING?

15 MS. GRANT: YES, THAT'S CORRECT. THAT'S EXACTLY
16 RIGHT, AND LET ME ADD -- YOUR HONOR, IT'S EXACTLY RIGHT. PLUS,
17 LET ME ADD ONE OTHER ELEMENT, WHICH IS THEY HAVE SAID ALL
18 ALONG: WE HAVE AN INSIDER TRADING POLICY, WE DON'T LET OUR
19 PEOPLE TRADE ON INSIDE INFORMATION, BUT THEY SAW IT FROM THE
20 SPIKES THAT, IN FACT, THERE WAS INSIDER TRADING, AND THEY
21 DIDN'T DO ANYTHING ABOUT IT.

22 THE COURT: WHY DID THEY SEE FROM THE SPIKES THAT
23 THERE WAS INSIDER TRADING? I MEAN, WHY -- WHY WAS IT NOT A
24 SITUATION -- I MEAN, AGAIN, I DON'T KNOW A LOT ABOUT THIS
25 WORLD. I DON'T EVEN KNOW A LOT ABOUT THE SORT OF MORE

1 TRADITIONAL WORLD OF IPOs AND STUFF, AND I'M NOT EVEN CONFIDENT
2 IT'S APPROPRIATE TO ANALOGIZE TO AN IPO. BUT WE SEE PEOPLE
3 ANNOUNCE THEY ARE GOING TO HAVE AN IPO, AND THE IPO TAKES
4 PLACE, AND WE SEE THE SHARE PRICE --

5 **MS. GRANT:** RIGHT.

6 **THE COURT:** -- SKYROCKET WHEN TRADING BEGINS --

7 **MS. GRANT:** RIGHT.

8 **THE COURT:** RIGHT? AND IT OFTEN SHOOTS DOWN. I
9 THINK THAT'S --

10 **MS. GRANT:** BUT THAT'S ALSO ON FULL INFORMATION.
11 HERE YOU HAVE NO INFORMATION.

12 **THE COURT:** WELL, BUT SO -- SO WHY -- WHY WOULDN'T WE
13 HAVE ALSO EXPECTED THE PRICE OF BITCOIN CASH TO SKYROCKET AT
14 THE OUTSET OF TRADING, EVEN IF COINBASE HAD ANNOUNCED IN
15 ADVANCE THAT IT WAS GOING TO SUPPORT TRADING OF BITCOIN CASH?

16 **MS. GRANT:** IT COULD HAVE -- I WON'T SAY SKYROCKET.
17 IT MIGHT HAVE HAD A BUMP. THAT'S NOT UNUSUAL. BUT THIS
18 SKYROCKETED BEYOND ANYTHING. I JUST WISH WE BROUGHT THESE
19 YOUTUBE VIDEOS WHERE THESE TRADERS ARE LOOKING AT IT AND
20 THEY'RE IN DISBELIEF AS TO THE PRICE.

21 **THE COURT:** RIGHT. I'M HAVING A -- I GUESS I'M STILL
22 HAVING A HARD TIME WRAPPING MY MIND AROUND THE CAUSE AND
23 EFFECT. LIKE, WHAT WAS THE CAUSE --

24 **MS. GRANT:** THE CAUSE -- I'M SORRY.

25 **THE COURT:** YOU KNOW, WHY -- I'M HAVING TROUBLE

1 WRAPPING MY MIND AROUND WHY IT SHOT UP SO MUCH AND WHY IT
2 WOULDN'T HAVE SHOT UP SO MUCH IN, I GUESS, A WAY THAT IT WAS
3 NOT SUSTAINABLE -- WE'LL GET TO THAT IN A SECOND -- BUT WHY IT
4 WOULDN'T HAVE SHOT UP SO MUCH IN A WAY THAT WAS NOT SUSTAINABLE
5 OR WAS ARTIFICIAL IF THEY HAD DONE IT IN THE WAY WE'RE
6 DESCRIBING. LIKE, WASN'T IT STILL GOING TO BE ALL THESE PEOPLE
7 WHO WERE JUST CRAZED ABOUT BITCOIN CASH AND WANTED TO GET THEIR
8 HANDS ON IT?

9 **MS. GRANT:** THERE MIGHT HAVE BEEN MORE PREPARATION.
10 THERE MIGHT BE PEOPLE BUYING IT ON OTHER EXCHANGES. I THINK
11 THERE WOULD HAVE BEEN MORE PREPARATION.

12 THIS IS PARTLY ALL OF THE INSIDERS WERE READY TO GO
13 AND DUMPED IT. AND DON'T FORGET THEY CLOSED IT WITHIN TWO
14 MINUTES. IF THEY KEPT IT OPEN AND SAID, OKAY, WE'RE GOING TO
15 CREATE THE LIQUIDITY -- FIRST OF ALL, WE'RE GOING TO EXECUTE
16 THE TRADES AT THE PRICES THAT WE TOLD YOU. LIKE, MY CLIENT HAD
17 \$2,000 ON HIS SCREEN. HE THOUGHT THAT WAS THE ACCEPTED PRICE,
18 SUDDENLY, IT'S, YOU KNOW, BEING EXECUTED AT WAY OVER 4,000.

19 I HAVE OTHER CLIENTS WHO HAVE RETAINED US IN THIS
20 CASE WHO HAVE GOT THEIR BITCOIN -- I'M SORRY -- THEIR BCH
21 EXECUTED AT 8,500 WHEN THEY THOUGHT IT WAS GOING TO BE EXECUTED
22 AT 3,000.

23 **THE COURT:** WHAT'S BCH?

24 **MS. GRANT:** I'M SORRY. BCH, I'M SORRY, IS BITCOIN
25 CASH.

1 **THE COURT:** LET'S TRY TO AVOID USING TOO MANY
2 ACRONYMS, BECAUSE THE STUFF IS ALREADY SO HARD TO UNDERSTAND.

3 **MS. GRANT:** YEAH, I KNOW IT'S VERY COMPLICATED.

4 **THE COURT:** WHY WOULD WE FILL IT UP WITH ACRONYMS?

5 **MS. GRANT:** YEAH.

6 **THE COURT:** IT'S NOT HARD TO SAY "BITCOIN CASH."

7 **MS. GRANT:** BITCOIN CASH. SO IF BITCOIN CASH -- IF
8 THEY HAD HELD IT OPEN, IF THEY HAD ENSURED THERE WAS LIQUIDITY,
9 IF THEY HAD CREATED LIQUIDITY THEMSELVES, THE MARKET MIGHT HAVE
10 EVENED OUT. AND --

11 **THE COURT:** AGAIN, I THINK THIS IS PROBABLY GOING TO
12 BE -- THESE QUESTIONS ARE PROBABLY GOING TO BE KIND OF
13 IGNORANT, BUT WHEN YOU SAY, "IF THEY CREATED LIQUIDITY," WHAT
14 DO YOU MEAN BY THAT? AND I THINK A RELATED QUESTION IS: WHY
15 DID THEY HAVE TO -- YOU KNOW, YOU SAID THEY HAD SHUT DOWN
16 TRADING.

17 **MS. GRANT:** WELL, THEY DID SHUT DOWN TRADING.

18 (SIMULTANEOUS COLLOQUY.)

19 **THE COURT:** AND THEY SHUT DOWN TRADING AND YOU SAID
20 THEY DID THAT -- YOU SEEM TO BE SAYING THEY DID THAT TO SAVE
21 THEIR OWN SKIN.

22 **MS. GRANT:** YES.

23 **THE COURT:** BUT THERE'S NOT AN EXPLANATION OF THAT IN
24 THE COMPLAINT EITHER, SO I DIDN'T UNDERSTAND PRECISELY. HOW
25 WAS IT THEY STOOD TO A BENEFIT OR AVOID HARM -- THEY

1 THEMSELVES, COINBASE THEMSELVES, STOOD TO AVOID HARM BY
2 SHUTTING DOWN TRADING TWO MINUTES AFTER IT STARTED?

3 **MS. GRANT:** WELL, THERE'S ALL THESE PEOPLE -- FIRST
4 OF ALL, IT'S ALL THESE PEOPLE THAT WANT TO SELL AND THE PRICE
5 IS GOING UP AND UP AND UP. SO WHERE IS THIS GOING TO COME
6 FROM?

7 THERE ARE TWO PARTS TO COINBASE. IT'S SORT OF LIKE
8 THE RETAIL PART WHERE YOU BUY AND SELL WHERE I, FOR INSTANCE,
9 HAVE MY ACCOUNT. AND THEN THERE'S THE GDAX, WHICH THEY NOW
10 HAVE NAMED COINPRO, WHICH IS THE EXCHANGE.

11 SO WHERE DO THEY GET COIN FROM, RIGHT? THEY'VE GOT
12 ALL THESE PEOPLE THAT WANT BCH, AND THE PRICE IS GOING UP AND
13 UP, SO THEY WERE GOING TO HAVE TO GET IT FROM GDAX. SO THEY
14 WERE GOING HAVE TO SELL, I THINK, THEIR OWN RESERVE OF COIN,
15 AND THEY WERE GOING TO HAVE TO SELL THEM AT ASTRONOMICAL
16 PRICES, AND THEY WERE GOING TO HAVE TO BUY -- I MEAN, FOR ALL
17 THE SELLERS, THEY WERE GOING TO HAVE TO BUY AT ASTRONOMICAL
18 PRICES.

19 FOR INSTANCE, WE HAVE BEEN CONTACTED BY A LOT OF
20 TRADERS DURING THAT TIME THAT HAD BCH THAT THEY HAD PURCHASED
21 ON OTHER EXCHANGES AT A RELATIVELY LOW PRICE.

22 **THE COURT:** ARE YOU SAYING THAT THERE WAS -- THAT SO
23 MUCH -- I MEAN, AGAIN, THIS IS -- I APOLOGIZE IF THESE ARE
24 RUDIMENTARY QUESTIONS, BUT ARE YOU SAYING THAT THERE WAS SO
25 MUCH BITCOIN CASH BEING PURCHASED THAT THERE WASN'T ANY MORE

1 BITCOIN CASH OUT THERE IN THE EXCHANGE TO BE PURCHASED?

2 **MS. GRANT:** CORRECT, YES.

3 **THE COURT:** AND THAT'S WHY THEY HAD TO SHUT IT DOWN?

4 **MS. GRANT:** THEY SAID THEY LACKED LIQUIDITY, SO I
5 THINK THAT'S ONE OF THE REASONS, AND I THINK THE OTHER REASON
6 WAS --

7 **THE COURT:** "LACKED LIQUIDITY" MEANING THE MARKET,
8 THERE WAS NOT --

9 (SIMULTANEOUS COLLOQUY.)

10 **MS. GRANT:** ENOUGH BUYERS AND SELLERS.

11 **THE COURT:** THERE WAS NO LONGER ANY BIT -- WHAT?

12 **MS. GRANT:** BUYERS AND SELLERS TO MATCH UP, RIGHT.

13 **THE COURT:** SO THERE WAS NO BITCOIN CASH TO BE BOUGHT
14 EVEN THOUGH PEOPLE WERE TRYING -- PEOPLE WERE PUTTING IN ORDERS
15 TO BUY IT, AND THERE WAS NOBODY AVAILABLE TO SELL IT, THAT'S
16 WHAT YOU MEAN WHEN YOU SAY THERE WAS NO LIQUIDITY?

17 **MS. GRANT:** YES. AND ALSO SELLERS WERE TRYING TO
18 SELL, AND THE PRICE IS GOING UP AND UP AND UP. SO IF I'M A
19 CUSTOMER AND I BOUGHT IT FOR, YOU KNOW, A THOUSAND DOLLARS ON
20 ANOTHER EXCHANGE AND I'M TRYING NOW TO SELL IT ON COINBASE AND
21 IT'S NOW UP TO 9,500, AND I'M TRYING TO MAKE THAT SPREAD,
22 COINBASE IS, WELL, I DON'T WANT TO HAVE TO PAY 9,500 FOR THIS
23 STUFF. AND THERE WERE A LOT OF SELLERS IN THERE TRYING TO SELL
24 AT THAT TIME AT VERY INFLATED PRICES, SO THEY SHUT IT DOWN.

25 **THE COURT:** SO I'M STILL TRYING TO UNDERSTAND WHY --

1 SO WHAT DID -- WHAT HARM WAS COINBASE TRYING AVOID TO ITSELF
2 WHEN IT SHUT DOWN TRADING TWO MINUTES LATER?

3 **MS. GRANT:** BASICALLY, A RUN.

4 **THE COURT:** WHAT?

5 **MS. GRANT:** BASICALLY, LIKE A RUN -- BASICALLY LIKE A
6 RUN ON THE BANK, BASICALLY A RUN ON COINBASE. THAT'S WHAT THEY
7 WERE TRYING TO AVOID, THAT THEY HAD TO BUY OUT ALL THESE
8 SELLERS AT INFLATED PRICES AND THAT THEY WOULD HAVE TO SUPPLY
9 COIN TO ALL THESE PURCHASERS.

10 **THE COURT:** BUT WHY WOULD THEY HAVE TO BUY OUT ALL
11 THESE SELLERS AT INFLATED PRICES IF THERE WERE ALL THESE PEOPLE
12 WHO HAD PUT IN ORDERS TO BUY -- I MEAN, I THOUGHT YOU SAID
13 EVERYBODY WAS WANTING TO BUY BITCOIN CASH AND NOBODY WAS
14 WANTING TO SELL IT.

15 **MS. GRANT:** NO, NO. THERE WERE A LOT OF SELLERS. I
16 THINK THE INSIDERS WANTED TO DUMP. THEY PUSHED THE PRICE --
17 IT'S A PUMP AND DUMP, RIGHT? SO THEY PUSHED THE PRICE UP.

18 THEN THE MINUTE THAT COINBASE SAYS, WE'RE GOING TO
19 SUPPORT BITCOIN CASH, THEY WANT TO DUMP IT, THEY WANT TO SELL.
20 SO THERE WERE A LOT OF SELLERS, AND THERE WERE BUYERS LIKE THE
21 RETAIL GUYS, LIKE MY GUY, JEFFREY BERK, WHO SAID, OH, WOW
22 THEY'RE SUPPORTING BCH, LET'S BUY SOME, AND HE PUTS IT IN AT
23 2,000 AND IT GETS EXECUTED AT 4,500. AND I HAVE -- I HAVE SOME
24 OTHER CLIENTS THEY PUT IT IN AT 3,000, IT GETS EXECUTED AT
25 8,500 TWO DAYS LATER. TWO DAYS LATER, BY THE WAY.

1 SO THERE WERE BUYERS AND SELLERS. BUT THEY --
2 COINBASE SAID -- I MEAN, THEY SAID, OKAY, THERE'S NO LIQUIDITY,
3 WE'RE GOING TO CUT THIS OFF IN TWO MINUTES.

4 **THE COURT:** RIGHT, BUT --

5 **MS. GRANT:** AND OUR CONTENTION IS THE INSIDERS HAVE
6 ALREADY DUMPED WITHIN THAT TIME, AND WE DON'T KNOW ABOUT
7 COINBASE'S PROPRIETARY TRADING AND WHAT IT DID DURING THAT TIME
8 PERIOD. BUT IT'S JUST FORTUITOUS THAT SOME PEOPLE WERE ABLE TO
9 GET OUT AT 9,500, AND SOME PEOPLE GOT STUCK HAVING TO BUY IT AT
10 9,500, AND THOSE PEOPLE WHO GOT STUCK WERE THE POOR RETAIL
11 CUSTOMER. AND WE'RE NOT QUITE SURE, BUT WE THINK IT WAS THE
12 INSIDERS WHO GOT OUT AT 9,500, FROM EVERYTHING THAT WE HAVE
13 SEEN. AND THAT REALLY WAS THE WHOLE POINT.

14 THERE'S NO -- I'M SORRY.

15 **THE COURT:** YOU MENTIONED EARLIER THAT NOW THERE ARE
16 A NUMBER OF OTHER EXCHANGES -- YOU SAID BACK THEN --

17 **MS. GRANT:** I THINK THERE ARE MORE EXCHANGES NOW,
18 YES.

19 **THE COURT:** COINBASE WAS SORT OF WHERE IT'S AT.

20 **MS. GRANT:** YES.

21 **THE COURT:** AND NOW THERE ARE MORE EXCHANGES, AND I
22 ASSUME THAT ON THOSE EXCHANGES, YOU CAN TRADE IN BITCOIN CASH.

23 **MS. GRANT:** NO, NOT IN ALL OF THEM.

24 **THE COURT:** OKAY.

25 **MS. GRANT:** NO.

1 **THE COURT:** HAVE THERE BEEN ANY OTHER EXCHANGES THAT
2 HAVE ROLLED OUT TRADING IN BITCOIN CASH?

3 **MS. GRANT:** THERE ARE A FEW, YES.

4 **THE COURT:** DO WE KNOW ANYTHING ABOUT HOW THEY DID
5 IT?

6 **MS. GRANT:** THEY DIDN'T CARRY ON THE WAY COINBASE
7 DID. THEY DIDN'T COME OUT -- THEY SAID WE'RE GOING TO SUPPORT
8 IT OR WE'RE NOT GOING TO SUPPORT IT, AND THEY SUPPORTED IT.
9 THEY DIDN'T SAY, WE'RE NOT GOING TO SUPPORT IT AND -- YOU KNOW,
10 UNTIL THERE'S A FAIR AND ORDERLY MARKET, AND, YOU KNOW, WE'VE
11 GOT TO FIGURE THIS OUT. THEY DIDN'T DO THAT.

12 HONESTLY, WE DON'T EVEN UNDERSTAND WHY COINBASE
13 DECIDED SUDDENLY TO SUPPORT IT OTHER THAN THIS PRESSURE FROM
14 INSIDER TRADERS AND THE FACT THAT THE DAY BEFORE THIS --

15 **THE COURT:** WAIT A MINUTE. WHAT PRESSURE FROM
16 INSIDER TRADERS?

17 **MS. GRANT:** WELL, I MEAN, THE INSIDER TRADERS WERE
18 ANXIOUS TO DUMP WHAT THEY HAD PURCHASED. SO THEY HAD A LOT OF
19 INSIDERS, WE THINK, THAT WANTED TO HAVE COINBASE SUPPORT
20 TRADING SO THAT THEY COULD DUMP THEIR COIN.

21 **THE COURT:** AND WHERE IS THAT IN THE COMPLAINT?

22 **MS. GRANT:** WHERE IS THAT? I FORGET. I'LL HAVE
23 MR. GREEN FIND THAT IN THE COMPLAINT.

24 THE OTHER INTERESTING --

25 **THE COURT:** NO, NO, NO. I WANT TO KNOW WHERE THAT IS

1 IN THE COMPLAINT.

2 **MS. GRANT:** PERHAPS THE EXPLANATION IS NOT AS GOOD AS
3 IT COULD BE. I MEAN, WE DO HAVE A WHOLE SECTION IN THERE ABOUT
4 INSIDERS TRADING.

5 **THE COURT:** SHOW ME.

6 (SIMULTANEOUS COLLOQUY.)

7 **THE COURT:** SHOW ME WHERE IT IS IN THE COMPLAINT. IT
8 MAY BE THERE. I'M NOT SAYING IT'S NOT THERE, BUT I WANT TO SEE
9 IT. WHERE DOES IT SAY THAT THE REASON THAT COINBASE DECIDED TO
10 SUPPORT TRADING IN BITCOIN CASH IN DECEMBER WAS ON PRESSURE
11 FROM INSIDER TRADERS?

12 **MS. GRANT:** WELL, I CAN'T SAY THAT IT SAYS THAT
13 PRECISELY. WHAT IT DOES, HOWEVER, SAY --

14 **THE COURT:** I MEAN, THE PROBLEM I HAVE WITH THIS CASE
15 IS THAT IT CERTAINLY SEEMS INTUITIVELY LIKE WHAT COINBASE DID
16 WAS NEGLIGENT, AND THAT, YOU KNOW, COINBASE DID NOT HANDLE THIS
17 PROPERLY.

18 **MS. GRANT:** CORRECT.

19 **THE COURT:** RIGHT? THE MOST POWERFUL EVIDENCE OF
20 THAT IS THEY HAD TO STOP TRADING AFTER TWO MINUTES, RIGHT? AND
21 IT SEEMS INTUITIVELY REMARKABLE THAT, YOU KNOW, THEY WOULD
22 ANNOUNCE AT 4:00 O'CLOCK THAT THEY'RE GOING TO BEGIN, YOU KNOW,
23 SUPPORTING TRADING IN BITCOIN CASH AT 5:30, WHEN ALL THEIR
24 PUBLIC STATEMENTS UP TIL THEN HAD BEEN, NO, WE'RE ONLY GOING TO
25 ALLOW YOU TO WITHDRAW AND WE'RE ONLY GOING TO DO THAT IN

1 JANUARY.

2 MS. GRANT: RIGHT.

3 THE COURT: INTUITIVELY, IT SEEMS LIKE THIS WAS
4 SOMETHING THAT WAS BUNGLED.

5 MS. GRANT: THAT'S CORRECT.

6 THE COURT: BUT I DON'T KNOW HOW WELL THE COMPLAINT
7 EXPLAINS, YOU KNOW, AGAIN, WHY IT WAS BUNGLED AND WHAT THE
8 MOTIVATIONS WERE AND HOW THEY COULD HAVE DONE IT -- HOW THEY
9 SHOULD HAVE DONE IT AND WHAT WOULD HAVE HAPPENED HAD THEY DONE
10 IT DIFFERENTLY. IT MAY JUST BE BECAUSE THIS IS A, YOU KNOW,
11 NEW WORLD, NEW AREA THAT WE JUDGES DON'T KNOW AS MUCH ABOUT AS
12 WE DO, YOU KNOW, TRADING STOCKS WITH CHARLES SCHWAB OR
13 WHATEVER.

14 MS. GRANT: RIGHT.

15 THE COURT: RIGHT? BUT THAT'S THE PROBLEM I'M HAVING
16 WITH THE COMPLAINT. SURE.

17 MR. GREEN: DOESN'T THAT, INDEED, STATE A CLAIM FOR
18 NEGLIGENCE? YOU KNOW, I MEAN TYPICALLY NEGLIGENCE, YOU DON'T
19 DO IT FOR A REASON, YOU DO IT (INDISCERNIBLE), RIGHT?

20 THE COURT: I DON'T KNOW, BECAUSE I FEEL LIKE FROM
21 READING THE COMPLAINT, YOU'RE LEFT NOT HAVING A GREAT SENSE OF
22 WHAT THEY SHOULD HAVE DONE OR WHAT THE CONSEQUENCES WOULD HAVE
23 BEEN HAD THEY DONE IT THE WAY THEY SHOULD HAVE DONE IT AS
24 OPPOSED TO THE WAY THEY DID IT. THAT'S THE PART THAT LEAVES
25 ME, YOU KNOW, A LITTLE BIT UNCLEAR, FROM THE WAY THE COMPLAINT

1 IS DRAFTED.

2 **MR. GREEN:** RIGHT. AND PART OF THAT ANALYSIS IS THE
3 REPRESENTATIONS OF THE AMOUNT OF PREPARATION THEY WERE GOING TO
4 DO TO MAKE AN ORDERLY MARKET, AND WE DO HAVE THOSE
5 REPRESENTATIONS THROUGHOUT THE COMPLAINT, SO THAT WHEN THEY
6 ACTUALLY DID --

7 **THE COURT:** YOU MEAN THE STATEMENTS THAT WE'RE NOT
8 GOING TO SUPPORT TRADING IN A CURRENCY UNLESS WE ARE, YOU KNOW,
9 CONVINCED IT'S GOING TO BE SAFE --

10 **MR. GREEN:** YEAH.

11 **THE COURT:** -- AND ALL THAT? AND DID THEY -- BUT DID
12 THEY TALK ABOUT AN ORDERLY -- WERE THEY TALKING ABOUT AN
13 ORDERLY MARKET, OR WERE THEY TALKING ABOUT SAFETY AND SECURITY?

14 **MR. GREEN:** BOTH, YOUR HONOR.

15 **THE COURT:** WHERE IS THE PART -- WHERE ARE THE
16 STATEMENTS ABOUT AN ORDERLY MARKET, NOT DOING THIS UNTIL -- I
17 MEAN, I'M NOT EXACTLY SURE WHAT AN ORDERLY MARKET MEANS, BUT
18 PUTTING THAT ASIDE FOR A MOMENT --

19 **MR. GREEN:** RIGHT, AND --

20 **THE COURT:** -- WHERE ARE THE STATEMENTS IN THE
21 COMPLAINT ABOUT HOW WE'RE NOT GOING TO DO -- WE'RE NOT GOING TO
22 SUPPORT TRADING IN THIS UNTIL WE KNOW THE MARKET IS GOING TO BE
23 ORDERLY.

24 **MR. GREEN:** PARAGRAPH 44.

25 **THE COURT:** FORTY-FOUR, OKAY.

1 **MR. GREEN:** STARTING THERE.

2 **THE COURT:** GIVE ME A SECOND.

3 **MR. GREEN:** THERE'S A NUMBER OF STATEMENTS.

4 **THE COURT:** WE HAVE -- IT SAYS, "WE HAVE NO PLANS TO
5 SUPPORT ADDITIONAL BLOCK CHAINS AT THIS TIME."

6 **MR. GREEN:** RIGHT.

7 **THE COURT:** THAT WAS IN JULY 2017.

8 **MR. GREEN:** RIGHT. AND GOING DOWN -- REALLY.

9 **MS. GRANT:** (INDISCERNIBLE.)

10 **MR. GREEN:** BEFORE WE GET TO THAT, 47 IS -- SAYS:

11 "IN ORDER TO DETERMINE WHICH FORK
12 TO SUPPORT, WE LOOK AT FACTORS SUCH AS SIZE
13 OF THE NETWORK, MARKET VALUE, AND CUSTOMER
14 DEMAND. WE MAKE THIS DECISION CAREFULLY
15 BECAUSE SAFELY SUPPORTING A NEW DIGITAL
16 CURRENCY REQUIRES SIGNIFICANT WORK FROM MANY
17 TEAMS."

18 AND THEN IN THE NEXT PARAGRAPH, "IF --" THE LAST
19 COUPLE OF SENTENCES -- "IF WE WERE TO SUPPORT A -- " "WE
20 WOULD -- "

21 LET ME SEE.

22 "IN ORDER TO SAFELY AND SECURE
23 ACCESS BITCOIN CASH, WE NEED TO FURTHER
24 UNDERTAKE A FURTHER PROCESS OF DESIGNING AND
25 TESTING SIGNIFICANT CHANGES TO OUR SYSTEM,

1 INCLUDING HOT AND COLD STORAGE."

2 **THE COURT:** WHAT'S HOT AND COLD STORAGE?

3 **MR. GREEN:** YEAH. I'M NOT GOING TO - I DON'T THINK I
4 CAN --

5 **MS. GRANT:** (INDISCERNIBLE) STORAGE ON THEIR SYSTEM
6 VERSUS NOT. COLD STORAGE MEANS -- THIS GOES INTO THE WHOLE
7 WALLET SITUATION.

8 IF I BUY BITCOIN, THE BITCOIN CASH ON COINBASE, THEY
9 CAN HOLD IT ON THEIR SYSTEM. IT'S IN SORT OF LIKE A WALLET ON
10 THEIR SYSTEM. THEY HAVE THE PRIVATE KEYS TO IT. IF IT'S COLD
11 STORAGE, THEY TAKE IT OFF THEIR SYSTEM SO THE CODE, THE PRIVATE
12 CODE KEY THAT ALLOWS YOU TO GET TO THE COIN IS NOT AVAILABLE TO
13 BE HAD. SO THAT'S HOT AND COLD STORAGE.

14 **THE COURT:** OKAY.

15 **MR. GREEN:** THEN PARAGRAPH 56 REFERS TO THE OLDER
16 EARLY MARKET. SO IN THE CONTEXT OF THESE --

17 **THE COURT:** WAIT, HOLD ON.

18 **MR. GREEN:** -- STATEMENTS --

19 **THE COURT:** LET ME LOOK AT PARAGRAPH 56.

20 **MR. GREEN:** YEAH. WE HAVE THE EMPHASIZED PORTION
21 THERE.

22 "IF WE RELEASE IT, YOU CAN BE SURE
23 THAT WE HAVE INVESTED SIGNIFICANT TIME AND
24 CARE IN SUPPORTING THAT DIGITAL ASSET
25 SECURELY. WE BELIEVE THIS IS THE BEST

1 APPROACH FOR US TO MAINTAIN CUSTOMER TRUST
2 AND ENSURE A FAIR AND ORDERLY MARKET."

3 **THE COURT:** OKAY. AND SO YOUR THEORY FOR WHY THEY
4 DIDN'T -- THEY ENDED UP NOT DOING IT THAT WAY, WHY THEY ENDED
5 UP ANNOUNCING AN HOUR AND A HALF BEFORE TRADING WOULD START,
6 HAVING UNTIL THEN TOLD THE PUBLIC THAT THEY WERE NOT GOING TO
7 SUPPORT FULL TRADING IN BITCOIN CASH AND ONLY IN JANUARY WOULD
8 THEY ALLOW WITHDRAWAL, YOUR THEORY FOR WHY THEY DID THAT IS
9 THAT -- WELL, A, I GUESS YOU WOULD SAY: WHO CARES WHY THEY DID
10 IT, IT WAS NEGLIGENT; AND THEY OWED A DUTY TO THEIR CUSTOMERS
11 TO BE -- TO BE MORE CAREFUL IN THE WAY THEY WERE GOING TO ROLL
12 OUT TRADING OF BITCOIN CASH.

13 AND THEN YOU WOULD SAY: FURTHERMORE, IT WAS -- IT
14 WAS MOTIVATED BY A DESIRE TO HELP INSIDERS GAIN PROFIT FROM THE
15 ROLLOUT, BECAUSE, I GUESS, YOU WOULD SAY THEY SORT OF KNEW OR
16 PREDICTED THAT THE PRICE WAS GOING TO SPIKE AND THEN INSIDERS
17 WERE GOING TO SELL RIGHT AWAY?

18 **MS. GRANT:** YES, AND THEY COULD SEE THAT FROM THE
19 ORDERS BOOKS.

20 **THE COURT:** THAT WHAT?

21 **MS. GRANT:** THEY COULD SEE IT FROM THE ORDER BOOKS
22 WHEN THEY HAD POST-ONLY ORDER BOOK POSTING.

23 **THE COURT:** POST ORDER ONLY -- POST-ONLY ORDERS, CAN
24 YOU EXPLAIN TO ME IN A LITTLE MORE DETAIL WHAT THAT MEANS,
25 BECAUSE THAT WASN'T IN THE -- I THINK THAT WAS ANOTHER AREA

1 WHERE YOU PROBABLY ASSUMED THAT I KNEW WHAT THAT MEANT, BUT I
2 DON'T.

3 **MS. GRANT:** MY UNDERSTANDING IS THAT YOU CAN POST
4 ONLY, WHICH MEANS THEY'RE NOT GOING TO START TRADING YET.
5 YOU'RE JUST GOING TO POST ORDERS TO SEE WHAT THE ORDER BOOK
6 LOOKS LIKE. AND THEY DID THAT FIRST. AND THEY SAID, ONCE
7 THERE'S SUFFICIENT LIQUIDITY FOR ALL THESE ORDERS THAT ARE
8 POSTED, THEN WE'RE GOING TO OPEN THE BOOK. THAT'S WHEN THEY
9 SAW THE PRICES SKYROCKETING, AND YET THEY OPENED -- THERE
10 WASN'T LIQUIDITY, AND YET THEY OPENED THE BOOK ANYWAY.

11 LET ME JUST ADD ONE OTHER --

12 **THE COURT:** SO YOUR VIEW IS THAT THEY SHOULD NEVER
13 HAVE OPENED TRADING IN THE FIRST PLACE. WHEN DID THESE
14 POST-ONLY ORDERS START COMING IN? AT 4:00 O'CLOCK, OR AT 5:30.

15 **MR. GREEN:** 4:00 TO 5:00, 4:00 TO 5:00. SO THEY WERE
16 FOR ABOUT AN HOUR. SO THEY KNEW -- THEY KNEW WHAT THE ORDERS
17 WERE WHEN THEY DECIDED TO OPEN.

18 **THE COURT:** IS THAT IN THE COMPLAINT?

19 **MR. GREEN:** YES. IF THEY WERE ALL --

20 **THE COURT:** BECAUSE I DIDN'T -- I REMEMBER KIND OF
21 SCRATCHING MY HEAD WONDERING ABOUT THOSE ALLEGATIONS, TOO. CAN
22 YOU SHOW ME THAT?

23 **MR. GREEN:** YES. THEY WERE ALL BUY ORDERS. THEN
24 THEY WOULD SEE IT WAS NOT BALANCED, BUT THEY WENT AHEAD AND
25 OPENED IT ANYWAY, AND THAT'S WHAT DROVE THE PRICE UP.

1 **MS. GRANT:** I THINK THERE'S A SCREEN SHOT THAT
2 DEMONSTRATES THAT.

3 **MR. GREEN:** PARAGRAPH 76, YOUR HONOR -- 75 AND 76.

4 **THE COURT:** OH, I SEE. SO YOU'RE -- SO, I GOT THE
5 FACTS A LITTLE BIT WRONG.

6 SO, THEY ANNOUNCED AT 4:00 P.M. THAT THEY -- FOR THE
7 FIRST TIME THAT THEY WERE OPENING TRADING IN POST-ONLY MODE,
8 AND THEN ACTUAL TRADING, ACTUAL EXCHANGES, THEY ANNOUNCED AT
9 5:15 THAT ACTUAL TRADING WOULD BEGIN AT 5:20; IS THAT RIGHT?

10 **MR. GREEN:** APPROXIMATELY, WITHIN A COUPLE OF MINUTES
11 OF THE TIME, YES.

12 **THE COURT:** OKAY. AND --

13 **MR. GREEN:** THAT'S ACTUALLY (INDISCERNIBLE).

14 **THE COURT:** AT THIS TIME COINBASE KNEW THE ORDERS ON
15 ITS POST-ONLY BOOK WERE PRIMARILY PURCHASE ORDERS THAT WOULD
16 DRIVE THE PRICE SHARPLY HIGHER?

17 **MR. GREEN:** RIGHT.

18 **THE COURT:** OKAY. AND THEN GOING BACK TO MY IPO
19 ANALOGY -- I MEAN, YOU KNOW, WHEN YOU OPEN TRADING ON
20 SOMETHING, PRESUMABLY, IT'S NOT UNCOMMON FOR THERE TO BE MOSTLY
21 BUY ORDERS THAT DRIVES THE PRICE UP SHARPLY, RIGHT?

22 **MS. GRANT:** YEAH, THE IPO, THOUGH, IS A WHOLE
23 DIFFERENT SITUATION. YOU'VE GOT A LOT OF DISCLOSURE. YOU'VE
24 GOT INVESTMENT BANKERS WHO ARE MAKING A MARKET JUST SO YOU
25 DON'T HAVE THE CRAZINESS THAT HAPPENED HERE. THE PROBLEM HERE

1 IS YOU DON'T HAVE THAT KIND OF -- THEY DON'T HAVE THOSE
2 PROTECTIONS HERE, AND THAT'S WHY THIS IS SUCH A CRITICAL ISSUE,
3 BECAUSE THIS IS HAPPENING ALL OVER THE PLACE.

4 AND THERE AREN'T -- I MEAN CFTC HAS JURISDICTION.
5 THE SEC HAS IPO -- ICO'S, WHICH ARE INITIAL COIN OFFERINGS.
6 MAYBE THEY HAVE JURISDICTION ON SOME OF THEM DEPENDING ON THE
7 CHARACTERISTICS, BUT THE PROTECTIONS THAT YOUR HONOR IS TALKING
8 ABOUT WITH AN IPO ARE ABSENT HERE, AND THAT'S WHY THIS IS SO
9 CRITICAL, AND THIS KEEPS HAPPENING OVER AND OVER AGAIN. SO --

10 **THE COURT:** WHEN YOU SAY THIS KEEPS HAPPENING OVER
11 AND OVER AGAIN, WHAT DO YOU MEAN?

12 **MS. GRANT:** I MEAN, THERE'S A LOT OF FRAUD, AND
13 THERE'S A LOT OF PUMP AND DUMP GOING ON IN THE CRYPTO CURRENCY
14 MARKET. I MEAN, THERE ARE A LOT OF PEOPLE WHO USED TO TRADE
15 -- THIS IS NOW ME TALKING. BUT THERE'S A LOT OF PEOPLE WHO
16 USED TO TRADE -- MR. BERK, FOR INSTANCE, DOESN'T WANT TO TRADE
17 ANY MORE CRYPTO CURRENCY, BECAUSE IT'S BEEN SO SUFFUSED WITH
18 FRAUD AND ALL KINDS OF SHENANIGANS THAT ARE NOT REGULATED AT
19 THIS POINT, THERE ARE A LOT OF PEOPLE WHO DON'T -- ESPECIALLY
20 RETAIL INVESTORS DON'T WANT TO TRADE ANY MORE.

21 **THE COURT:** ANY RESPONSE TO --

22 **MR. RAGLAND:** THERE'S A FEW THINGS, YOUR HONOR, I
23 THINK I NEED TO POINT OUT.

24 FIRST, A LOT OF THINGS HAVE BEEN SAID AT THIS HEARING
25 AND IN THE PLEADING -- IN THE PAPERS, THE OPPOSITION BRIEF,

1 THAT AREN'T ANYWHERE IN THE COMPLAINT, AND I THINK YOUR HONOR
2 HAS POINTED THOSE OUT.

3 ALSO THERE'S A LOT OF THINGS SAID HERE. "PUMP AND
4 DUMP" HAS BEEN REPEATED. THAT'S NOWHERE IN THE COMPLAINT.
5 THAT'S A VERY SERIOUS ALLEGATION, AND I THINK IT'S TOTALLY
6 IMPROPER TO MAKE THOSE ALLEGATIONS UNLESS IN A SWORN PLEADING.

7 **THE COURT:** WELL, BUT I THINK -- I AGREE WITH YOU
8 THEY'RE THROWING THAT TERM AROUND A LOT, BUT I THINK WHEN YOU
9 SORT OF STRIP AWAY THE RHETORIC, WHAT THEY ARE SAYING IS
10 THAT -- I'M SURE THEY'LL CORRECT ME IF I'M WRONG, BUT I THINK
11 WHAT THEY'RE SAYING IS THAT, AT A MINIMUM, COINBASE ROLLED THIS
12 OUT IN A WAY THAT FACILITATED A KIND OF QUASI-PUMP AND DUMP,
13 RIGHT, FACILITATED THE ABILITY OF PEOPLE TO DRIVE UP THE PRICE
14 AND THEN SELL AT THE CEILING, SORT OF KNOWING THAT IT WOULD
15 COME DOWN?

16 **MR. RAGLAND:** RIGHT.

17 **THE COURT:** AND THAT THE WAY THEY ROLLED THIS OUT
18 REALLY FACILITATED THAT, AND THE WAY THEY ROLLED IT OUT WAS
19 CONTRARY TO THE PROMISE OF, YOU KNOW, MAKING SURE THAT THEIR
20 MARKETS WOULD BE "ORDERLY MARKETS"; IS THAT FAIR?

21 **MR. RAGLAND:** YEAH, I BELIEVE THAT'S THEIR
22 IMPLICATION. THOSE ALLEGATIONS ARE NOWHERE IN THE COMPLAINT.
23 THERE'S ALL THIS TALK OF INSIDER TRADING. THERE'S NOT A SINGLE
24 ALLEGATION IDENTIFYING ANY PARTICULAR TRADE, THE WHO, WHAT,
25 WHERE, WHEN. IQBAL AND TWOMBLY HAVE TO MEAN SOMETHING, MUCH

1 LESS --

2 **THE COURT:** I MEAN, THAT IS ONE THING I'M CONFUSED
3 ABOUT. I'M CONFUSED ABOUT HOW IMPORTANT THE ALLEGATIONS OF
4 INSIDER TRADING ARE TO THIS LAWSUIT, RIGHT? BECAUSE, I MEAN,
5 YOU COULD IMAGINE -- AND I GUESS -- IS THIS THE FIRST AMENDED
6 COMPLAINT?

7 **MR. RAGLAND:** IT IS, YOUR HONOR.

8 **THE COURT:** BUT IT'S THE FIRST MOTION TO DISMISS THAT
9 I'VE CONSIDERED, SO I'D HAVE --

10 **MR. RAGLAND:** WE MOVED ON THE FIRST COMPLAINT, WHICH
11 WAS AN INSIDER TRADING THEORY. WE MOVED TO DISMISS THAT.

12 **THE COURT:** RIGHT.

13 **MR. RAGLAND:** AND THEN THEY FILLED A NEW COMPLAINT
14 RATHER THAN --

15 (SIMULTANEOUS COLLOQUY.)

16 **THE COURT:** THEY KIND OF WALKED BACK THE INSIDER
17 TRADING PART, BUT THERE'S STILL A LOT OF NOISE IN THERE ABOUT
18 INSIDER TRADING. WHAT IF THERE WAS NOTHING ABOUT INSIDER
19 TRADING, THOUGH? I MEAN, WHAT IF -- AND THIS IS A QUESTION
20 DESIGNED TO GET AT HOW IMPORTANT ARE THESE ALLEGATIONS ABOUT
21 INSIDER TRADING TO THESE NEW THEORIES THAT THEY'RE ARTICULATING
22 IN THE FIRST AMENDED COMPLAINT?

23 IF -- LET'S SAY THERE'S NO ALLEGATION OF INSIDER
24 TRADING AND THEY MERELY ALLEGED WHAT I JUST DESCRIBED, RIGHT,
25 WHICH IS THEY ROLLED THIS OUT IN A WAY WHERE IT OBVIOUSLY WAS

1 NOT GOING TO BE ORDERLY, RIGHT, AND, YOU KNOW, THEY HAD
2 PREVIOUSLY MADE ALL THESE STATEMENTS ABOUT HOW THEY WEREN'T
3 GOING TO DO THIS, AND THEN ALL OF A SUDDEN AT 4:00 THEY
4 ANNOUNCE THEY'RE DOING IT POST ONLY; 5:15, THEY ANNOUNCE
5 TRADING IS GOING TO START AT 5:20. AT 5:15 THEY WOULD HAVE
6 EVERY REASON TO SEE THAT THERE ARE ALL THESE BUY ORDERS IN AND
7 THAT THE STOCK IS GOING TO -- STOCK -- THE PRICE OF THE BITCOIN
8 CASH IS GOING TO SHOOT UP AND IN THE WAY THAT, YOU KNOW, THAT
9 WAS NOT GOING TO -- THE MARKET WAS GOING TO -- THEIR MARKET,
10 THE EXCHANGE, WAS NOT GOING TO BE ABLE TO SUSTAIN. AND HAD
11 THEY DONE IT IN A MORE ORDERLY WAY BY ANNOUNCING IN ADVANCE
12 THAT THEY ARE MAKING PREPARATIONS TO SUPPORT TRADING AND THEN
13 SORT OF GAVE PEOPLE TIME TO SORT OF ADJUST TO THAT AND THEN
14 LAUNCHED IT, IT WOULD HAVE GONE IN A MUCH MORE ORDERLY WAY.

15 THAT DOESN'T HAVE ANYTHING TO DO WITH INSIDER
16 TRADING. IT JUST -- IT'S AN ALLEGATION THAT THEY BUNGLED THE
17 ROLL OUT THAT IS -- IN A WAY THAT IS AT LEAST NEGLIGENT, IF NOT
18 UNFAIR BUSINESS PRACTICE.

19 **MR. RAGLAND:** THOSE ALLEGATIONS THAT STATE THAT CLAIM
20 ARE NOT IN THIS COMPLAINT, YOUR HONOR.

21 **THE COURT:** OKAY.

22 **MR. RAGLAND:** ALSO, I THINK THE TIMELINE IS
23 IMPORTANT, VERY IMPORTANT TO THAT ISSUE.

24 MR. BERK, THE PLAINTIFF HERE, HE SIGNED UP FOR THE
25 COINBASE PLATFORM ON AUGUST 30TH, 2017. THAT'S AN IMPORTANT

1 DATE. THAT'S ALMOST A MONTH AFTER THE HARD FORK, WHERE BITCOIN
2 CASH FORKED OFF FROM BITCOIN. SO LET'S LOOK AT THE TIMELINE.
3 THESE ARE ALL FROM THE ALLEGATIONS IN THE COMPLAINT.

4 JULY 19TH, 2017, COINBASE ALERTED THE CUSTOMERS THAT
5 IT WILL NOT SUPPORT A FORK OF BITCOIN, WHICH WAS THE
6 ESTABLISHED DIGITAL CURRENCY. AT THAT POINT THERE WAS
7 DISCUSSION IN THE COMMUNITY, WILL IT BE SEGWIT, WILL IT BE
8 SOMETHING ELSE, THEY DIDN'T KNOW WHAT THE FORK WOULD LOOK LIKE,
9 BUT THEY'RE TALKING ABOUT A FORK IN THE BLOCK CHAIN.

10 JULY 27TH --

11 **THE COURT:** WILL IT BE WHAT? WHAT WAS THAT YOU SAID?
12 THERE WAS TALK -- WILL THERE BE --

13 **MR. RAGLAND:** THERE WILL BE A FORK OF THE BITCOIN
14 BLOCK CHAIN.

15 **THE COURT:** YEAH.

16 **MR. RAGLAND:** BUT THERE WAS A DISCUSSION IN THE
17 COMMUNITY WHAT THAT FORK WOULD LOOK LIKE. FOR EXAMPLE, ARE WE
18 GOING TO TAKE A CURRENCY, AND ARE WE GOING TO, YOU KNOW,
19 REVALUE IT, WHAT WILL THE REVALUATION BE, WHATEVER.

20 THERE WAS A COUPLE OF BLOCK CHAIN CANDIDATES FOR THAT
21 FORK, ONE SEGWIT, WHICH IS IMPORTANT BECAUSE --

22 **THE COURT:** SEGWIT, WHAT'S THAT?

23 **MR. RAGLAND:** IT WAS ANOTHER, BASICALLY, BITCOIN
24 CASH -- A FORK OF THE BITCOIN BLOCK CHAIN. IT'S SORT OF LIKE
25 FEW THINK BACK TO IS BETAMAX OR VHS GOING TO WIN THE VIDEOTAPE

1 WARS. I'M CERTAINLY OLD ENOUGH TO REMEMBER THAT. SEGWIT WAS
2 BETAMAX, AND, YOU KNOW, BITCOIN CASH WAS VHS. WHO WON?
3 BITCOIN CASH.

4 THAT'S IMPORTANT BECAUSE ONE OF THE SPIKES THEY
5 IDENTIFY IN THE PRICE COINCIDES WITH WHEN THE DECISION WAS MADE
6 BY BITCOIN CASH THIS IS HOW WE'LL GO. SO THAT'S VERY IMPORTANT
7 AS FAR AS GETTING BEHIND THAT.

8 **THE COURT:** IN OTHER WORDS, MID JULY.

9 **MR. RAGLAND:** RIGHT. THERE'S ALL KINDS -- AND ALSO
10 THERE'S --

11 **THE COURT:** WHEN WAS THE DECISION MADE ABOUT THE HARD
12 FORK AGAIN?

13 **MR. RAGLAND:** WELL, THE DECISION -- AUGUST 1ST WAS
14 THE HARD FORK, AUGUST 1ST, 2017, 29 DAYS BEFORE MR. BERK BOUGHT
15 BITCOIN -- SIGNED UP FOR COINBASE AND BOUGHT BITCOIN.

16 **THE COURT:** OKAY.

17 **MR. RAGLAND:** SO THAT'S IMPORTANT BECAUSE HE KNEW,
18 BECAUSE COINBASE HAD SAID A MONTH AND A HALF EARLIER, WE'RE NOT
19 SUPPORTING A FORK OF BITCOIN.

20 **THE COURT:** RIGHT.

21 **MR. RAGLAND:** YOU BUY BITCOIN WITH US, THAT'S ALL YOU
22 GET.

23 **THE COURT:** OKAY.

24 **MR. RAGLAND:** ON AUGUST -- ON JULY 27TH, COINBASE
25 REITERATED, WE'RE NOT SUPPORTING BITCOIN CASH; WE ARE NOT

1 SUPPORTING A FORK OF BITCOIN, WE'RE NOT GOING TO DO IT.

2 **THE COURT:** OKAY.

3 **MR. RAGLAND:** SO ALL THE CUSTOMERS WHO HAD BITCOIN AT
4 THE TIME -- NOT MR. BERK BECAUSE HE WASN'T A CUSTOMER YET OR A
5 USER OF THE EXCHANGE -- THEY COULD TAKE THEIR BITCOIN OUT AND
6 PUT IT IN ONE OF THE MANY OTHER EXCHANGES THAT EXISTED. THE
7 COMPLAINT REFERS TO THREE OR FOUR OF THEM THAT EXISTED AT THE
8 TIME. SO --

9 **THE COURT:** BUT MY UNDER -- JUST TO PAUSE --

10 **MR. RAGLAND:** SURE.

11 **THE COURT:** I DON'T WANT TO PREVENT YOU FROM
12 CONTINUING WHAT YOU'RE SAYING, SO -- BUT JUST TO PAUSE VERY
13 BRIEFLY. MY UNDERSTANDING -- AND, AGAIN, THIS IS NOT REALLY
14 FLESHED OUT IN THE COMPLAINT, BUT MY UNDERSTANDING IS IT --
15 IT'S NOT -- IT'S ACTUALLY A DIFFICULT AND TIME CONSUMING
16 PROCESS TO MOVE YOUR BITCOIN FROM ONE EXCHANGE TO ANOTHER; IS
17 THAT RIGHT?

18 **MR. RAGLAND:** I THINK THAT'S OVERSTATED IN THE
19 COMPLAINT. WHEN YOU INITIALLY SIGN UP, IN ORDER TO GET YOUR
20 U.S. CURRENCY TO PURCHASE BITCOIN, FOR EXAMPLE, THERE IS -- YOU
21 GO THROUGH AN AUTHORIZATION TO MAKE SURE IT'S YOU. IT'S FRAUD
22 PREVENTION. SO IT MIGHT TAKE A COUPLE OF DAYS. I KNOW IN MY
23 PERSONAL EXPERIENCE IT TOOK A COUPLE OF DAYS TO SET UP AN
24 ACCOUNT AND TO BE ABLE TO START TRADING.

25 **THE COURT:** WHAT ABOUT TO GET YOUR BITCOIN OUT OF AN

1 EXCHANGE?

2 **MR. RAGLAND:** YOU KNOW, I DON'T HAVE -- THERE ARE NO
3 SPECIFIC ALLEGATIONS AS TO THAT. THERE'S SOME GENERALIZED,
4 WHICH I THINK DON'T PASS THE STANDARD. I'M NOT SURE THAT'S
5 ACCURATE. I DON'T KNOW HOW ACCURATE THAT IS, BUT, YOU KNOW,
6 THAT'S SOMETHING THAT I'LL LOOK INTO, AND I THINK IT NEEDS TO
7 BE ALLEGED IF THEY'RE GOING TO STATE A CLAIM.

8 **THE COURT:** OKAY.

9 **MR. RAGLAND:** BUT, AGAIN, WE'RE TALKING ABOUT
10 JULY 19TH. THIS IS, YOU KNOW, WEEKS BEFORE THE HARD FORK, AND
11 ALSO MORE THAN A MONTH BEFORE MR. BERK SIGNED UP --

12 **THE COURT:** WAIT. WHAT IS WEEKS BEFORE THE HARD
13 FORK? SORRY.

14 **MR. RAGLAND:** JULY 19TH WHEN COINBASE SAID, WE'RE NOT
15 SUPPORTING THE HARD FORK.

16 **THE COURT:** RIGHT, RIGHT.

17 **MR. RAGLAND:** THEREFORE, IF YOU HAVE BITCOIN, TAKE IT
18 SOMEWHERE ELSE IF YOU WANT TO TRADE IN THE HARD FORK CURRENCY.

19 SO ON JULY 28TH, 2017, AGAIN COINBASE ALERTED ITS
20 CUSTOMERS, ITS USERS, THAT THEY WILL NOT BE ABLE TO WITHDRAW
21 BITCOIN CASH AFTER THE HARD FORK. AGAIN, JUST SO YOU KNOW, IF
22 YOU WANT TO TAKE YOUR BITCOIN OUT -- ALL THESE EDUCATED -- BUT
23 IF DOWN THE ROAD COINBASE DECIDES TO SUPPORT BITCOIN CASH,
24 YOU'LL GET THAT EQUIVALENT.

25 SO WHAT HAPPENED ON THE HARD FORK DAY -- I HAVE A

1 HUNDRED BITCOIN, FOR EXAMPLE. I HAVE A HUNDRED BITCOIN, A
2 HUNDRED BITCOIN CASH. I GET THE EQUIVALENT NUMBER OF BITCOIN
3 CASH UNITS AS I HAD BITCOIN ON THE HARD FORK.

4 WHAT COINBASE IS SAYING IS, WE'RE NOT SUPPORTING THE
5 FORK, IF WE DECIDE LATER TO, WE'RE NOT GOING TO KEEP YOUR
6 BITCOIN CASH, WE'RE GOING TO GIVE IT TO YOU, AND IT WILL BE IN
7 YOUR ACCOUNT, AND YOU CAN DO WITH IT WHAT YOU WILL.

8 **THE COURT:** AND WE'RE GOING TO GIVE IT TO YOU AT THE
9 VALUE AS OF THE TIME OF THE HARD FORK?

10 **MR. RAGLAND:** PRESUMABLY, PRESUMABLY. THAT'S HOW I
11 READ IT. I HAVEN'T INVESTIGATED THAT (INDISCERNIBLE).

12 **THE COURT:** OKAY.

13 **MR. RAGLAND:** BUT WE CERTAINLY CAN -- HARD FORK ON
14 AUGUST 1ST. AGAIN -- SO AUGUST 3RD THEN, THERE'S A BLOG POST
15 WHERE COINBASE SAYS, HEY, WE HEARD YOU, COMMUNITY; THE HARD
16 FORK HAS HAPPENED TO BITCOIN CASH, WE GET IT, YOU ALL WANT US
17 TO SUPPORT BITCOIN CASH. WE'RE WORRIED THERE'S SECURITY
18 CONCERNS, AND WE'RE NOT GOING TO SUPPORT A CURRENCY UNLESS
19 WE'RE -- YOU'RE NOT GOING TO GET YOUR INFORMATION STOLEN, YOUR
20 BANK ACCOUNTS HACKED, THINGS LIKE THAT.

21 **THE COURT:** YOU MEAN TO MAKE SURE THERE'S GOING TO BE
22 AN ORDERLY MARKET?

23 **MR. RAGLAND:** SO WE'LL WORK ON THAT SUPPORT -- AGAIN,
24 THIS IS AUGUST 3RD. AND THEY SAID, QUOTE, WE'RE PLANNING TO
25 HAVE SUPPORT FOR BITCOIN CASH BY JANUARY 1ST, NOT ON

1 JANUARY 1ST, BUT JANUARY 1ST, ASSUMING NO ADDITIONAL --

2 **THE COURT:** BUT -- BUT IT WAS ONLY -- AT LEAST
3 ACCORDING TO THE ALLEGATIONS IN THE COMPLAINT, THAT WAS TO BE
4 ABLE TO WITHDRAW YOUR BITCOIN CASH, RIGHT.

5 **MR. RAGLAND:** RIGHT. WHAT IT SPECIFICALLY SAID --
6 AND THE ALLEGATIONS IN THE COMPLAINT ARE A LITTLE BIT LOOSEY
7 GOOSEY, AND SO -- AND IN THE OPPOSITION BRIEF, TOO, WE CITED
8 AND I BELIEVED WE ATTACHED THE ACTUAL BLOG POST, WHICH IS IN
9 THE RECORD. I HAVE COPIES HERE IF THE COURT WOULD LIKE.

10 WHAT IT ACTUALLY SAID IS, ONCE BITCOIN CASH IS
11 SUPPORTED, CUSTOMERS CAN WITHDRAW BITCOIN CASH.

12 **THE COURT:** WITHDRAW?

13 **MR. RAGLAND:** RIGHT. WE'LL MAKE A DETERMINATION --
14 AND THIS IS AN EXACT QUOTATION.

15 "WE'LL MAKE A DETERMINATION AT A
16 LATER DATE ABOUT ADDING TRADING SUPPORT."
17 NOT WE'LL NEVER SUPPORT IT, BUT WE'LL DECIDE.
18 THEY'RE FIGURING THIS OUT, BEING TRANSPARENT WITH THE
19 COMMUNITY.

20 AGAIN, THIS WAS 27 DAYS BEFORE MR. BERK SIGNED UP
21 WITH COINBASE, SIGNED THE USER AGREEMENT, AND BOUGHT BITCOIN.

22 **THE COURT:** OKAY.

23 **MR. RAGLAND:** SO 29 DAYS LATER WHEN HE SIGNED UP, HE
24 KNEW ALL THIS INFORMATION HERE.

25 **THE COURT:** OKAY.

1 **MR. RAGLAND:** WE'VE GOT TO LOOK AT THE PLAINTIFF HERE
2 AND THE MATERIALITY. SO, OBVIOUSLY, NO ALLEGED
3 MISREPRESENTATIONS (INDISCERNIBLE) ALLEGED TO BE FALSE AT THE
4 TIME MADE ANYWAY, BUT NONE OF THOSE ARE IN ANY WAY RELEVANT TO
5 MR. BERK, WHO IS THE ONLY PLAINTIFF HERE, BECAUSE HE SIGNED UP
6 ON AUGUST 30TH.

7 AND THEN ON NOVEMBER 13TH, COINBASE NOTIFIED ITS
8 EMPLOYEES, WE'RE ACTUALLY GOING TO SUPPORT, YOU KNOW, BITCOIN
9 CASH, KEEP THIS SECRET, REMEMBER OUR INSIDER TRADING POLICIES,
10 ALL THOSE, AND THEY TRIED TO IMPLY THAT HAVING AN INSIDER
11 TRADING POLICY IS A BAD THING. I THINK IT'S A GOOD THING.

12 **THE COURT:** IS THERE ANYTHING IN THE COMPLAINT ABOUT
13 BITCOIN -- ABOUT COINBASE SAYING: REMEMBER OUR INSIDER TRADING
14 POLICY.

15 **MR. RAGLAND:** NOTHING IN THE COMPLAINT. THEY DO
16 REFER TO THE INSIDER TRADING POLICY.

17 **THE COURT:** OKAY.

18 **MR. RAGLAND:** THERE'S ALSO NOTHING IN THE COMPLAINT
19 THAT SAYS THEY DIDN'T TELL THEIR EMPLOYEES ABOUT THE INSIDER
20 TRADING POLICY.

21 **THE COURT:** OKAY.

22 **MR. RAGLAND:** AND THERE'S, OBVIOUSLY, NO ALLEGATION
23 OF ANY INSIDER ACTUALLY ALLEGING --

24 OKAY. WELL, THEY DID -- ACTUALLY -- THANK YOU.

25 MS. MEYER POINTS ME TO PARAGRAPH 63 OF THE COMPLAINT.

1 THIS IS TO YOUR HONOR'S QUESTION JUST NOW, WHERE THEY DO SAY
2 THAT COINBASE APPARENTLY --

3 **THE COURT:** OKAY.

4 **MR. RAGLAND:** -- TOLD ITS EMPLOYEES NOT TO TRADE. SO
5 THEY ADMIT THEY TOLD ITS EMPLOYEES NOT TO TRADE.

6 SO THEN ON DECEMBER 19TH IS WHEN THE ANNOUNCEMENT AND
7 THE TRADING WAS OPENED. THIS IS IMPORTANT FOR THE MANIPULATION
8 CLAIM. THERE'S NO DOUBT THAT COINBASE IS A SIGNIFICANT
9 EXCHANGE AND HAS AN EFFECT ON WHAT IT DOES.

10 IF COINBASE HAD SAID IN NOVEMBER, IN JUNE, WHENEVER,
11 WE'RE SUPPORTING BITCOIN CASH ON THIS DATE, THEY WOULD BE
12 ACCUSED OF MARKET MANIPULATION, YOU'RE JUST DRIVING UP THE
13 PRICE SO YOU -- I MEAN, IT'S DAMNED IF YOU DO, DAMNED IF YOU
14 DON'T.

15 WHAT COINBASE DID WAS ANNOUNCED TRADING WAS OPENED
16 WHEN THEY'RE -- AS SOON AS THEY WERE READY AND CONFIDENT THAT
17 WOULD BE POSSIBLE TO DO THAT TECHNOLOGICALLY.

18 WHEN THE BOOKS OPENED -- I DON'T THINK THE DISCUSSION
19 OF POST-ONLY MODE AND 4:00 O'CLOCK AND 5:00 O'CLOCK, I DON'T
20 THINK THAT'S FULLY ACCURATE. IT'S CERTAINLY NOT ALLEGED IN THE
21 COMPLAINT. IT NEEDS TO BE.

22 AND THEN THEY SHUT THINGS DOWN WHEN IT LOOKED BAD.

23 COINBASE IS AN EXCHANGE. MR. BERK POSTED, I WANT TO
24 BUY SOME BITCOIN CASH. SOMEONE ELSE, WE DON'T KNOW WHO, SAID I
25 WANT TO SELL IT. HE PLACED AN ORDER AT THE TIME THE PRICE WAS

1 AROUND \$2,000 A UNIT. BY THE TIME THAT ORDER GOT FILLED, JUST,
2 LIKE OTHER MARKETS -- YOU KNOW, THERE'S A LINE FOR PEOPLE TO
3 FILL -- AT THE TIME IT WAS FILLED, IT WAS \$4,000, \$4,200. HE
4 HAD THE OPPORTUNITY TO CANCEL. THERE'S ALLEGATIONS THE CANCEL
5 BUTTON WASN'T WORKING AT SOME POINT, BUT NO ALLEGATION THAT
6 MR. BERK WAS UNABLE TO CANCEL OR THAT HE TRIED TO AND --

7 **THE COURT:** QUICK QUESTION ABOUT THAT. IS THERE --
8 AND, AGAIN, THIS IS SOMETHING THAT'S NOT IN THE COMPLAINT, BUT
9 IS THIS, LIKE, A REGULAR -- LIKE, IF YOU HAVE AN ACCOUNT ON
10 CHARLES SCHWAB, OR WHATEVER, AND YOU'RE BUYING STOCK, IS IT A
11 SITUATION WHERE YOU PUT IN AN ORDER TO BUY SOMETHING, AND IT'S
12 OUT THERE PENDING, AND YOU'RE WATCHING THE STOCK PRICE GO UP?
13 IS ONE ABLE TO WATCH THE PRICE OF BITCOIN CASH GO UP?

14 **MR. RAGLAND:** YES. YES, THERE IS.

15 **THE COURT:** AFTER THEY'VE PUT IN THEIR ORDER?

16 **MR. RAGLAND:** AND, IMPORTANTLY, ALSO, WHEN YOU PLACE
17 YOUR ORDER, YOU CAN SET A LIMIT. YOU CAN SAY: I WANT A
18 HUNDRED UNITS OF BITCOIN CASH, BUT I DON'T WANT TO PAY MORE
19 THAN \$2,000 PER UNIT. AND IF THE PRICE IS TOO HIGH BY THE TIME
20 THE ORDER GETS TO BE FILLED, YOUR ORDER WON'T BE COMPLETED.

21 SO, AGAIN, THAT'S SOMETHING THAT IS -- THAT'S A FACT
22 THAT'S ABSENT FROM THE COMPLAINT THAT'S VERY IMPORTANT.

23 SO I THINK THAT, YOUR HONOR -- I'M HAPPY TO ANSWER
24 ANY QUESTIONS. I THINK WHERE WE ARE IS THERE'S NO ALLEGATION
25 OF HOW COINBASE BENEFITED FROM ANY OF THIS. THERE'S NO ACTUAL

1 ALLEGATIONS OF ANY ACTUAL INSIDER TRADING OR ANY CONDUCT THAT
2 IS ALLEGED THAT CAN STATE A CLAIM FOR ANY OF THESE CLAIMS.

3 AND I'LL ANSWER ANY QUESTIONS THE COURT HAS.

4 **THE COURT:** WELL, I MEAN, I GUESS THE ONLY QUESTION,
5 I GUESS, I HAVE FOR YOU RIGHT NOW IS: COULDN'T YOU -- IT MAY
6 BE THAT THEY NEED TO DO A BETTER JOB OF ALLEGING IT AND JUST
7 SORT OF A MORE THOROUGH JOB OF EXPLAINING HOW ALL THIS WORKS
8 AND WHY THE CHOICES THAT COINBASE MADE WERE BAD CHOICES AND ALL
9 THAT. BUT COULDN'T YOU -- I MEAN, IF YOU'RE BEING CHARITABLE
10 TO THE ALLEGATIONS IN THE COMPLAINT, I MEAN, COULDN'T YOU TEASE
11 OUT A NEGLIGENCE CLAIM AT A MINIMUM FOR THE REASONS THAT I'VE
12 KIND OF ALREADY LAID OUT?

13 **MR. RAGLAND:** RIGHT. THAT'S -- I'M HAPPY TO ADDRESS
14 NEGLIGENCE. SO THE ANSWER, I THINK, IS NO, CERTAINLY NOT BASED
15 ON THESE ALLEGATIONS. WELL FOR A COUPLE OF REASONS. ONE AS TO
16 A MATTER OF LAW, THEY ALLEGE ONLY ECONOMIC LOSSES, AND THE
17 ECONOMIC LOSS RULE DOES NOT PERMIT THEM TO GET ONLY ECONOMIC
18 LOSSES UNDER TORT. SO IT'S GONE FOR THAT REASON.

19 THEY NEED SOME SORT OF SPECIAL RELATIONSHIP. THEY
20 HAVEN'T ALLEGED IT. THAT'S THE (INDISCERNIBLE) FACTORS. AND
21 SO, NO, THEY CAN'T -- THE NEGLIGENCE. ALSO, THEY DON'T
22 ACTUALLY ALLEGE WHAT WAS NEGLIGENT. WE'RE NOT IN A RES IPSA
23 SITUATION.

24 **THE COURT:** I GUESS I'M PIVOTING A LITTLE BIT TO --
25 WELL, THEY DEFINITELY DON'T DO A GREAT JOB OF ALLEGING IT, BUT

1 COULDN'T YOU TEASE OUT FROM THE ALLEGATIONS THAT -- CAN YOU
2 INFER FROM THE ALLEGATIONS THAT WHAT COINBASE REALLY SHOULD
3 HAVE DONE IS ANNOUNCED FURTHER IN ADVANCE THAT THEY WERE GOING
4 TO -- MAKING PREPARATIONS TO SUPPORT TRADING IN BITCOIN CASH
5 AND ANNOUNCED -- GIVEN MORE LEAD TIME TO THE -- TO ITS
6 CUSTOMERS IN THE ANNOUNCEMENT ABOUT WHEN TRADING IN BITCOIN
7 CASH WAS GOING TO START?

8 **MR. RAGLAND:** BUT I DON'T UNDERSTAND HOW IT WAS
9 NEGLIGENT NOT TO DO THAT? I THINK THEY NEED TO ARTICULATE
10 THAT, OR ELSE WE'RE IN A SITUATION WHERE HEADS I WIN, TAILS YOU
11 LOSE. IT'S LIKE IF THE ANNOUNCEMENT IS EARLIER, YOU'RE
12 MANIPULATING THE MARKET, TRYING TO DRIVE THE PRICE UP, BENEFIT
13 YOUR INSIDERS. IF THE ANNOUNCEMENT IS IN REAL TIME SO THE
14 ENTIRE WORLD KNOWS WHEN IT'S GOING TO START, THEN IT'S: YOU'RE
15 MANIPULATING THE MARKET. I MEAN, IT NEEDS TO BE ALLEGED.

16 I DON'T UNDERSTAND BASED ON THAT -- BASED ON THAT,
17 HOW IS IT THAT ADDITIONAL LEAD TIME WOULD SOMEHOW BE -- NOT
18 GIVING THAT WAS SOMEHOW NEGLIGENT. THEY DON'T ARTICULATE IT.
19 I HONESTLY DON'T HAVE ANY CLUE HOW THAT'S NEGLIGENT.

20 **THE COURT:** OKAY.

21 **MR. RAGLAND:** ASIDE FROM THE ECONOMIC LOSS RULE AND
22 ALL THE OTHER LEGAL REASONS WHY THEY HAVEN'T MET THEIR BURDEN
23 ON A NEGLIGENCE CLAIM.

24 **THE COURT:** OKAY. BEFORE WE TURN TO THE ARBITRATION
25 ISSUE, DO YOU WANT TO JUST HAVE THE LAST WORD ON THE MOTION TO

1 DISMISS?

2 **MR. GREEN:** A COUPLE OF POINTS, YOUR HONOR.

3 FIRST OF ALL, ONCE THEY HAD THE ORDER BOOK IN THE
4 POST-ONLY MODE FOR AN HOUR AND A HALF, THEY COULD MAKE A
5 DECISION WHETHER OR NOT TO GO FORWARD OR NOT AT 5:15 AND 5:20,
6 AND THEY DECIDED TO GO AHEAD. I THINK THAT'S PART OF WHAT WE
7 ALLEGE AS THE NEGLIGENCE.

8 **THE COURT:** BUT THAT HAS NOTHING TO DO WITH THE WAY
9 IT WAS ROLLED OUT AND THE FACT THAT IT WASN'T ANNOUNCED IN
10 ADVANCE; THAT IS JUST ABOUT THE DECISION TO -- THE SORT OF
11 SPLIT SECOND DECISION TO NOT -- TO NOT STOP THE PRESSES,
12 BASICALLY, AT 5:15 OR 5:20 OR WHATEVER IT WAS.

13 **MR. GREEN:** THAT'S ONE OF THE DECISIONS THAT WAS MADE
14 ALONG THE WAY THAT WAS NEGLIGENT.

15 BUT, ALSO, I THINK WE'VE LAID OUT THE FACTS THAT
16 DEMONSTRATE THAT THEIR SYSTEMS WERE NOT CAPABLE OF HANDLING
17 THIS PROCESS IN A WAY THAT IT SHOULD HAVE BEEN ABLE TO HANDLE
18 IT, IN A WAY THAT THEY SAID THEY WERE GOING TO BE ABLE TO
19 HANDLE IT. AND IT REALLY FOLLOWS THE SAME ANALOGY --

20 **THE COURT:** WHERE ARE YOU IN THE COMPLAINT ON THAT
21 ISSUE?

22 **MR. GREEN:** WELL, I MEAN, THAT'S REALLY ALL THE
23 REPRESENTATIONS THAT WE TALKED ABOUT EARLIER, ABOUT HOW THEY
24 WERE GOING TO DO THE WORK AND WHAT IT WOULD TAKE TO DO IT
25 RIGHT, FOLLOWED BY THE CHRONOLOGY OF HOW IT ACTUALLY

1 HAPPENED --

2 THE COURT: OKAY.

3 MR. GREEN: -- TOGETHER.

4 AND IT REALLY FOLLOWS THE SAME ANALYSIS OF THE IPO
5 CASE THAT WE CITED IN OUR BRIEF, THE NASDAQ IPO AND SECURITIES
6 AND DERIVATIVE LITIGATION -- I'M SORRY -- THE FACEBOOK, IN
7 WHICH NASDAQ WAS FOUND NEGLIGENT OR FILED A COMPLAINT ON
8 NEGLIGENCE, APPLYING TO SAME KIND OF DUTY THEORY THAT WE HAVE
9 HERE AND IN THE SAME KIND OF: YOU SAID YOU WERE GOING TO BE
10 ABLE TO HANDLE THIS KIND OF AN ORDERLY MARKET AND YOU WERE NOT
11 ABLE TO DO THAT, THEREFORE, IT STATES A NEGLIGENCE CLAIM. SO
12 WE'RE REALLY RELYING ON THAT ANALYSIS THAT'S SET OUT THERE.

13 AND THEN THE FINAL POINT I WOULD MAKE ON THIS IS THAT
14 THE DEFENDANTS HAVE KIND OF TWISTED OUR NEGLIGENT
15 MISREPRESENTATION CLAIMS INTO TRYING TO ADDRESS STATEMENTS OF
16 WE DON'T SAY ARE FALSE. BUT, REALLY, WHAT IT COMES DOWN TO,
17 WHEN THEY DID OPEN THE MARKET AT 5:15 OR 5:20, OR EVEN THE
18 4:00 O'CLOCK ON THAT DAY, AFTER HAVING MADE THE REPRESENTATIONS
19 ABOUT WE WILL NOT DO THIS UNLESS WE ARE FULLY CAPABLE AND IT
20 WILL BE AN ORDERLY MARKET, THAT BECOMES THE MISREPRESENTATION
21 THAT PEOPLE RELY ON, BECAUSE YOU'RE SAYING WE'RE OPEN, WELL,
22 YOU ALREADY TOLD US YOU WOULDN'T OPEN UNLESS IT WERE SAFE AND
23 ORDERLY, SO SAYING WE'RE OPEN MEANS YOU'RE OPEN SAFE AND
24 ORDERLY, AND 2-1/2 MINUTES LATER IT'S CLOSED, AND THEY GO
25 THROUGH ALL THIS CRAZY PROCESS.

1 SO THE NEGLIGENT REPRESENTATION IS REALLY WRAPPED UP
2 IN THAT.

3 **THE COURT:** IT'S REALLY -- I MEAN, IN THAT RESPECT,
4 IT'S SORT OF -- I MEAN, IS IT A MISREPRESENTATION OR IS IT AN
5 OMISSION.

6 **MR. GREEN:** I COULD ARGUE BOTH SIDES OF IT. I MEAN,
7 YOU'VE MADE A STATEMENT AT THAT POINT WHICH COULD -- WE'RE
8 OPEN; WELL, THAT'S TRUE, BUT THERE'S FURTHER INFORMATION THAT'S
9 NEEDED TO UNDERSTAND -- FOR A PURCHASER OR TRADER IN BITCOIN
10 CASH, THERE'S FURTHER INFORMATION THAT'S NECESSARY IN ORDER TO
11 MAKE THAT STATEMENT NOT MISLEADING, BECAUSE YOU'RE MAKING IT IN
12 THE CONTEXT OF HAVING MADE EARLIER STATEMENTS YOU WOULD ONLY DO
13 SO IF YOU'VE DONE ALL THE WORK TO MAKE IT ORDERLY.

14 **THE COURT:** OKAY. ALL RIGHT.

15 **MR. GREEN:** SO THE ADDITIONAL INFORMATION WOULD BE,
16 YEAH, BUT WE HAVEN'T -- WE'RE DOING IT SUDDENLY FOR WHATEVER
17 REASON AT 5:20 ON DECEMBER 19TH AND WE HAVEN'T DONE ALL THE
18 WORK NECESSARY TO MAKE IT ORDERLY.

19 **THE COURT:** AND I GUESS WE SHOULD REALLY TURN TO THE
20 ARBITRATION ISSUE, BUT LET ME JUST ASK ONE MORE QUESTION.

21 CAN YOU TELL ME A LITTLE BIT MORE ABOUT THE REASON --
22 ARE THERE ANY MORE FACTS ABOUT THE REASON WHY COINBASE DECIDED
23 TO SUPPORT TRADING WHEN IT DID AT THE PARTICULAR TIME THAT IT
24 DID?

25 **MR. GREEN:** THE OTHER FACT THAT WE HAVEN'T TALKED

1 ABOUT IS THE FACT THAT THE CME BEGAN -- MAYBE YOU CAN ADDRESS
2 THIS --

3 **MS. GRANT:** THE CME BEGAN FUTURES TRADING THE DAY
4 BEFORE --

5 **THE COURT:** CHICAGO MERCANTILE EXCHANGE?

6 **MS. GRANT:** YES, THE DAY BEFORE -- NOW, NOT ON
7 BITCOIN CASH, WHICH, BY THE WAY, DOES TRADE FUTURES, BUT ON
8 BITCOIN ITSELF.

9 **THE COURT:** AND WHAT'S -- SO -- THAT WAS ANOTHER
10 QUESTION THAT I HAD FROM READING THE COMPLAINT, IS YOU SEEM TO
11 INTIMATE IN THE COMPLAINT THAT THE TIMING OF COINBASE'S
12 DECISION TO SUPPORT TRADING RE- -- AND DECISION ABOUT WHEN TO
13 START SUPPORTING TRADING RELATED IN SOME WAY TO THE OPENING OF
14 BITCOIN FUTURES ON THE CHICAGO MERCANTILE EXCHANGE. BUT I
15 COULDN'T UNDERSTAND -- THIS IS ANOTHER EXAMPLE OF I DIDN'T --
16 YOU SEEM TO THINK THAT I WOULD UNDERSTAND THE RELATIONSHIP
17 BETWEEN THOSE TWO THINGS, BUT I DIDN'T -- THERE WAS -- AND,
18 THEREFORE, PERHAPS THERE WAS NO REAL EXPLANATION OF THE
19 RELATIONSHIP BETWEEN THOSE TWO THINGS IN THE COMPLAINT, AND I
20 DIDN'T UNDERSTAND IT.

21 **MS. GRANT:** I CAN'T SAY, YOUR HONOR, AT THIS
22 JUNCTURE, THAT WE TOTALLY UNDERSTAND IT OURSELVES. I DO
23 UNDERSTAND THAT IT'S UNDER INVESTIGATION BY THE CFTC.

24 AND BECAUSE OPENING BCH AND LAUNCHING IT WHEN THEY
25 DID AFFECTED THE PRICE OF BITCOIN THAT WAS BEING TRADED BY THE

1 CME. SO THE CME'S TRADING FUTURES. THEY USE COINBASE AS ONE
2 OF THE PLATFORMS TO -- AS AN INDEX TO SET PRICES. AND THEY
3 KNEW THAT ONCE COINBASE OPENED BCH, INITIALLY EVERYBODY WAS
4 GOING TO RUN INTO BCH, AND IT WAS GOING TO TANK AND LOWER THE
5 PRICE OF BITCOIN CASH -- OF BITCOIN. I'M SORRY. AND THAT WAS
6 GOING TO AFFECT THE PRICE ON THE FUTURES EXCHANGE.

7 THE TIMING IS JUST TOO FORTUITOUS THAT THAT HAPPENED
8 AND THAT THERE IS A CONNECTION BETWEEN THE PRICE OF BITCOIN
9 CASH AND BITCOIN, PARTICULARLY AT THAT TIME. AND, IN FACT,
10 THAT'S WHAT HAPPENED, WHICH IS BITCOIN'S PRICE PLUMMETED AS A
11 RESULT OF COINBASE LAUNCHING BITCOIN CASH.

12 **THE COURT:** AND SO THE THEORY IS THAT THE REASON
13 COINBASE WAS IN A RUSH TO SUPPORT TRADING AND ANNOUNCED IT SO
14 QUICKLY, AND THE ANNOUNCEMENT WAS SO SUDDEN, IS THAT BITCOIN
15 FUTURES BEGAN BEING TRADED ON THE CHICAGO MERCANTILE EXCHANGE
16 THE DAY BEFORE?

17 **MS. GRANT:** THAT'S CORRECT.

18 **THE COURT:** AND COINBASE KNEW THAT THIS LAUNCH WOULD
19 REDUCE THE PRICE OF --

20 **MS. GRANT:** BITCOIN.

21 **THE COURT:** -- OF THE FUTURES?

22 **MS. GRANT:** YES.

23 **THE COURT:** AND THAT SO IT'S ANOTHER --

24 **MS. GRANT:** REDUCE THE PRICE OF BITCOIN, SO ANYONE
25 WHO HAD FUTURES, AND ESPECIALLY IF THEY WERE SHORT FUTURES,

1 WOULD MAKE A KILLING. SO WE THINK THERE'S A CONNECTION.

2 **THE COURT:** AND SO YOUR THEORY -- YOU HAVEN'T ALLEGED
3 IT, BUT YOUR THEORY IS THAT SOMEBODY WHO WAS INVOLVED --
4 SOMEBODY AT COINBASE WHO WAS INVOLVED IN THE DECISION TO
5 HURRIEDLY ANNOUNCE THAT IT WAS SUPPORTING TRADING IN BITCOIN
6 CASH WAS -- STOOD TO BENEFIT FROM THE PRICE OF BITCOIN FUTURES
7 GOING DOWN ON THE CHICAGO MERCANTILE EXCHANGE?

8 **MS. GRANT:** ESSENTIALLY, YES.

9 **THE COURT:** BUT, AGAIN, THAT'S NOT IN THE COMPLAINT,
10 SO WHAT AM I SUPPOSED TO DO WITH THAT THEORY THAT YOU'VE
11 JUST -- THAT YOU'VE JUST AFFIRMED?

12 **MS. GRANT:** IT PERHAPS CAN USE A LITTLE -- I MEAN,
13 THE ALLEGATION IS IN THE COMPLAINT. PERHAPS IT COULD USE A
14 LITTLE MORE FLUSHING OUT. THE PROBLEM IS IT'S CURRENTLY UNDER
15 INVESTIGATION, AND THERE'S JUST SO MUCH ABOUT IT THAT WE KNOW.

16 **MR. RAGLAND:** MAY I RESPOND TO THAT POINT, YOUR
17 HONOR?

18 **THE COURT:** SURE, BRIEFLY.

19 **MR. RAGLAND:** WELL, FIRST, IT'S JUST FALSE, AND THIS
20 IS AN EXAMPLE OF MANY THINGS THEY SAID, THIS MUST HAVE HAPPENED
21 BECAUSE OF THIS, WHICH ARE JUST STATEMENTS WITH NO EVIDENTIARY
22 SUPPORT, NO ALLEGATION TO SUPPORT IN THE COMPLAINT, AND THAT
23 HAPPENED TO BE JUST FALSE.

24 AND AS FAR AS LOOKING AT THE COMPLAINT, THIS BRINGS
25 UP JUST THE PURE -- YOU KNOW, MS. GRANT SAID, WE DON'T

1 UNDERSTAND, OURSELVES, THE CONNECTION BETWEEN THIS CHICAGO
2 MERCANTILE EXCHANGE, BITCOIN AND THIS.

3 IF YOU DON'T UNDERSTAND, YOURSELF, DON'T ALLEGE IT IN
4 OPEN COURT AND AGAINST MY CLIENT. I THINK THAT'S IMPROPER.

5 IF WE LOOK AT THE COMPLAINT, INDICATIVE OF THIS
6 WHOLE, THIS HAPPENED AND, THEREFORE, IT MUST BE BAD, IS
7 PARAGRAPH 16, WHICH THEY RELY ON HEAVILY, THEY SAY THERE'S
8 THESE SPIKES IN TRADING AND THAT INDICATES SOMETHING WRONG.
9 THEY DON'T EVEN SAY THAT THEY KNOW IT'S INSIDER TRADING. THEY
10 SAY SPECIFICALLY THAT IT IMPLIES.

11 **THE COURT:** DOESN'T IT PRETTY STRONGLY IMPLY, THOUGH?

12 **MR. RAGLAND:** WELL, THEY DON'T IDENTIFY ANY PURPORTED
13 INSIDER. THEY DON'T IDENTIFY ANY TRADES. THEY DON'T IDENTIFY
14 ANY VOLUMES SUFFICIENT TO CAUSE THOSE SPIKES. WHAT'S THE
15 VOLUME THAT CAUSES THE SPIKE?

16 **THE COURT:** BUT THERE'S NO PUBLIC RECORD --

17 **MR. RAGLAND:** IT MIGHT BE BILLIONS OF DOLLARS WORTH
18 OF TRADES.

19 **THE COURT:** THERE'S NO PUBLIC RECORD OF WHO'S TRADING
20 IN THIS STUFF, RIGHT?

21 **MR. RAGLAND:** BUT THERE'S VOLUME RECORDS. THEY CAN
22 FIGURE OUT HOW MUCH VOLUME WOULD BE REQUIRED TO CAUSE THAT
23 SPIKE. IT MIGHT BE BILLIONS OF DOLLARS. IT MIGHT BE MORE THAN
24 THE ENTIRE HOLDINGS WITHIN THE COINBASE PLATFORM. I DON'T
25 KNOW. BUT THEY HAVEN'T ALLEGED THAT. AND SO IT'S JUST AN

1 EXAMPLE OF THESE ALLEGATIONS THAT I THINK DON'T PASS *TWOMBLY*
2 AND *IQBAL* STANDARDS, MUCH LESS RULE 9(B) STANDARDS AND THAT I
3 THINK NEED TO BE PARTICULARIZED BECAUSE WE NEED TO KNOW WHAT
4 WE'RE SHOOTING AT BECAUSE SO MUCH HAS BEEN SAID THAT'S JUST
5 SIMPLY FALSE.

6 **THE COURT:** OKAY. ON THE ARBITRATION, MS. MEYER, I
7 GUESS I SHOULD TALK TO YOU PRIMARILY.

8 **MR. RAGLAND:** THANK YOU, YOUR HONOR.

9 **THE COURT:** THANK YOU.

10 **MS. MEYER:** YES, YOUR HONOR.

11 **THE COURT:** OKAY. I GUESS LET ME MAKE TWO
12 PRELIMINARY -- LET ME GIVE YOU TWO PRELIMINARY THOUGHTS. LET
13 ME PULL UP THE ARBITRATION STUFF HERE.

14 OKAY. SO, FIRST, ON THE DELEGATION ISSUE, IT SEEMS
15 TO ME THAT THE PROBLEM YOU HAVE IS IN THE WAY THE ARBITRATION
16 PROVISION HAS BEEN DRAFTED, RIGHT? AND YOU HAVE -- YOU KNOW,
17 YOU HAVE THE REFERENCE TO THE AMERICAN ARBITRATION
18 ASSOCIATION'S RULES, AND THERE'S SOME QUESTION ABOUT IN THIS
19 CONTEXT WHETHER THE REFERENCE TO THE AMERICAN ARBITRATION
20 ASSOCIATION'S RULES ON ITS OWN, WITHOUT MORE, IN THIS CONTEXT
21 WOULD CONSTITUTE A CLEAR AND UNMISTAKABLE DELEGATION.

22 BUT LET'S ASSUME -- LET'S ASSUME THAT WITHOUT MORE IT
23 WOULD. THE PROBLEM IS YOU HAVE THIS SENTENCE AT THE END OF THE
24 ARBITRATION PROVISION THAT SAYS IF A COURT DECIDES THAT ANY
25 PROVISION OF THIS SECTION 7.2 IS INVALID OR UNENFORCEABLE, THAT

1 PROVISION SHALL BE SEVERED AND THE OTHER PARTS OF THIS SECTION
2 IN 7.2 SHALL STILL APPLY.

3 SO IN CONTRAST TO THE *MOHAMED VERSUS UBER* CASE, AND
4 IN CONTRAST TO, I THINK, ALL OF THE DISTRICT COURT CASES YOU
5 CITE WHERE THAT SEVERABILITY PROVISION REFERENCES THE ENTIRE
6 CONTRACT, THIS SEVERABILITY PROVISION REFERENCES ONLY THE
7 ARBITRATION PROVISION WITHIN THE CONTRACT.

8 AND SO IN LIGHT OF THAT, I THINK THAT -- I THINK THAT
9 JUDGE CHEN'S ANALYSIS, JUDGE CHEN'S ASSESSMENT OF THE
10 SIGNIFICANCE OF THE SEVERABILITY PROVISION DIDN'T WORK IN
11 *MOHAMED VERSUS UBER*, BUT DOES WORK HERE. IN OTHER WORDS, THAT
12 KIND OF -- THAT ANALYSIS DOES APPLY HERE SINCE THAT
13 SEVERABILITY PROVISION IS IN THE ARBITRATION PROVISION AND
14 REFERENCES ONLY THE ARBITRATION PROVISION.

15 SO THAT'S NUMBER ONE. YOU CAN ADDRESS -- OBVIOUSLY,
16 YOU CAN ADDRESS THAT.

17 BUT, NUMBER TWO, I GUESS, WOULD BE -- LET'S ASSUME
18 THAT YOU ARE UNABLE TO TALK ME OUT OF THE POSITION THAT I JUST
19 ARTICULATED ON THAT, WOULDN'T THE -- WOULDN'T IT MAKE THE MOST
20 SENSE -- WELL, YOU KNOW WHAT? THE SECOND POINT I'M
21 ARTICULATING IS A LITTLE COMPLICATED, AND SO WHY DON'T WE
22 BOOKMARK IT AND TALK ABOUT THE FIRST POINT FIRST. GO AHEAD.

23 **MS. MEYER:** OKAY. SO I THINK THE IMPORTANT THING TO
24 KEEP IN MIND ABOUT THE *MOHAMED* DECISION, BOTH JUDGE CHEN'S
25 DECISION INITIALLY AND THEN THE NINTH CIRCUIT'S REVERSAL OF

1 JUDGE CHEN'S ORDER, IS THAT WE WEREN'T TALKING ABOUT A
2 SEVERABILITY PROVISION. WE WERE TALKING ABOUT A VENUE
3 PROVISION.

4 **THE COURT:** OH, OKAY.

5 **MS. MEYER:** AND, YES, THAT WAS SEPARATE FROM THE
6 ARBITRATION CLAUSE.

7 **THE COURT:** YES.

8 **MS. MEYER:** BUT WHAT THE VENUE PROVISION --

9 **THE COURT:** BUT THE DISTRICT COURT CASES THAT YOU
10 CITED TO ME WERE ABOUT SEVERABILITY PROVISIONS, AM I
11 REMEMBERING THAT CORRECTLY?

12 **MS. MEYER:** YES, YOUR HONOR. THOSE DISTRICT COURT
13 CASES DID INVOLVE A SEVERABILITY PROVISION OUTSIDE OF THE
14 ARBITRATION AGREEMENT.

15 **THE COURT:** RIGHT.

16 **MS. MEYER:** SO THERE ISN'T A CASE THAT IS EXACTLY ON
17 POINT WITH THE FACTS WE HAVE HERE. HOWEVER, IN *MOHAMED* --

18 **THE COURT:** BUT DOESN'T THAT -- BUT -- BUT DOESN'T
19 THAT MAKE A VERY BIG DIFFERENCE? I MEAN, IF THE SEVERABILITY
20 PROVISION GOVERNS THE ENTIRE CONTRACT, THEN, OF COURSE, THERE
21 WOULD BE EVERY REASON TO INCLUDE THE SEVERABILITY PROVISION
22 THAT REFERENCES A COURT EVEN IF THERE WERE A CLEAR AND
23 UNMISTAKABLE DELEGATION TO THE ARBITRATOR TO DECIDE
24 ARBITRABILITY BECAUSE WE KNOW THERE ARE OTHER REASONS YOU MIGHT
25 END UP IN COURT ON THE CONTRACT, THE INJUNCTIVE RELIEF,

1 WHATEVER. BUT SINCE THE SEVERABILITY PROVISION, WHICH
2 CONTEMPLATES COURT ACTION, IN THE ARBITRATION PROVISION
3 THERE -- THAT SEEMS TO RENDER IT AMBIGUOUS BECAUSE --
4 PARTICULARLY, IN LIGHT OF THE FACT THAT THERE IS NO ACTUAL
5 EXPLICIT STATEMENT IN THE ARBITRATION PROVISION ABOUT
6 DELEGATIONS, JUST A REFERENCE TO THE RULES OF THE AMERICAN
7 ARBITRATION ASSOCIATION. I MEAN, THERE WOULD BE NO -- DOESN'T
8 IT MAKE IT AMBIGUOUS ABOUT WHETHER THERE MIGHT SOMETIMES BE
9 COURT INVOLVEMENT ON THE ARBITRABILITY QUESTION?

10 **MS. MEYER:** I DON'T THINK IT DOES RENDER IT AMBIGUOUS
11 AND THIS IS WHY: OBVIOUSLY, THERE ARE SITUATIONS EVEN WHEN YOU
12 HAVE A DELEGATION PROVISION WHERE YOU'RE GOING TO END UP IN
13 COURT TALKING ABOUT ENFORCEABILITY OF THAT DELEGATION
14 PROVISION. THAT'S WHY WE'RE HERE TODAY. YOUR HONOR, IS
15 DECIDING WHETHER --

16 **THE COURT:** WELL, IT'S ENFORCEABILITY OF THE
17 ARBITRATION PROVISION AT ALL.

18 **MS. MEYER:** ARBITRATION PROVISION, BUT ALSO -- THAT'S
19 TRUE, BUT --

20 **THE COURT:** SO WHAT WOULD BE -- SO IF THERE WERE A
21 CLEAR AND UNMISTAKABLE DELEGATION TO THE ARBITRATOR TO DECIDE
22 THE QUESTION OF ARBITRABILITY, WHAT WOULD BE THE CIRCUMSTANCE
23 IN WHICH YOU WOULD BE IN COURT ARGUING ABOUT WHETHER SOME OF
24 THESE PROVISIONS IN THIS ARBITRATION CLAUSE SHOULD BE SEVERED?

25 **MS. MEYER:** WELL, THIS CASE IS AN EXAMPLE. WE'RE

1 HERE ARGUING ABOUT -- THERE IS CLEAR AND --

2 **THE COURT:** WE'RE HERE ARGUING ABOUT WHETHER
3 THERE'S -- ARGUING ABOUT WHETHER THERE'S A CLEAR AND
4 UNMISTAKABLE DELEGATION.

5 **MS. MEYER:** I UNDERSTAND THAT. BUT PART OF THE
6 ARGUMENT IS THAT, MR. BERK, FOR EXAMPLE, IS AN UNSOPHISTICATED
7 CONSUMER, AND THAT, THEREFORE, THE DELEGATION PROVISION IS NOT
8 ENFORCEABLE AS TO HIM IN THE CONTEXT OF THIS CASE. AND YOUR
9 HONOR IS GOING TO DECIDE THE ENFORCEABILITY OF THE DELEGATION
10 PROVISION IN THE CONTEXT OF THAT CASE AND SO THE SEVERABILITY
11 PROVISION --

12 **THE COURT:** BUT THERE'S NOTHING ABOUT SEVERABILITY
13 THERE, THOUGH, IN WHAT YOU JUST SAID --

14 **MS. MEYER:** I DISAGREE.

15 **THE COURT:** THE QUESTION IS JUST -- WOULD MERELY BE
16 ABOUT WHETHER -- WHETHER TO DELEGATE -- WHETHER THE -- WHETHER
17 THE ARBITRABILITY QUESTION SHOULD BE DELEGATED TO THE
18 ARBITRATOR, RIGHT?

19 **MS. MEYER:** I SUPPOSE THAT'S THE CASE, BUT THE IDEA,
20 I BELIEVE, OF WHAT IS HAPPENING IN SECTION 7.2 IS THAT EVEN IF
21 THE ARBITRATION QUESTIONS AREN'T DELEGATED TO THE ARBITRATOR,
22 THE REST OF 7.2 AND THE REST OF THE RULES SET OUT IN 7.2 ARE
23 STILL IN PLACE, EVEN IF THAT ONE PROVISION THROUGH THE AAA
24 RULES ISN'T ENFORCEABLE.

25 AND SO IT'S A -- IT'S A CONDITIONAL PROVISION. IF WE

1 END UP IN A SITUATION WHERE A COURT IS DECIDING ENFORCEABILITY
2 OF THIS SECTION 7.2, THEN THE REMAINDER OF THE ARBITRATION
3 PROVISION REMAINS IN PLACE. IT'S NOT SAYING THAT WE AGREE THAT
4 A COURT SHOULD DECIDE SEVERABILITY OF SECTION 7.2, AND I THINK
5 THAT'S IMPORTANT --

6 **THE COURT:** SO, IN OTHER, WORDS YOU'RE SAYING THAT
7 THE WAY THIS PROVISION SHOULD BE -- THIS SENTENCE SHOULD BE
8 READ IS --

9 **MS. MEYER:** IF, IF.

10 **THE COURT:** WE CLEARLY -- WE HAVE DELEGATED THE
11 QUESTION OF ARBITRABILITY TO AN ARBITRATOR, BUT IF FOR SOME
12 REASON THE COURT CONCLUDES WE HAVEN'T AND THEN THE COURT
13 FURTHER CONCLUDES THAT SOME PROVISION IN SECTION 7.2 IS
14 INVALID, THAT PROVISION -- YOU SAY COST SHIFTING OR SOMETHING
15 LIKE THAT -- THAT PROVISION IS SEVERABLE?

16 **MR. RAGLAND:** ABSOLUTELY, ABSOLUTELY. AND I THINK
17 THAT'S IMPORTANT TO LOOK AT IT THAT WAY IN LIGHT OF *MOHAMED*,
18 BECAUSE IN THE *MOHAMED* CASE, WHAT THAT VENUE PROVISION SAID WAS
19 ANY DISPUTE -- ANY DISPUTE BETWEEN THE PARTIES IS WITHIN THE
20 EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS.

21 IT'S MORE OF A PRESCRIPTIVE PROVISION THAN SOME OF
22 THESE SEVERABILITY CLAUSES IN THE OTHER DISTRICT COURT CASES
23 THAT WE'VE BEEN LOOKING AT, BECAUSE IF THAT'S NOT AMBIGUOUS AND
24 IF THE NINTH CIRCUIT IS SAYING THAT PROVISION, REFERRING TO ANY
25 DISPUTE, IS ARTIFICIAL AND NOT CREATING AMBIGUITY AS TO THE

1 DELEGATION CLAUSE, THEN I THINK THE SAME RESULT HAS TO BE THE
2 CASE HERE.

3 **THE COURT:** I DO SEE WHAT YOU'RE SAYING, BUT I -- I
4 GUESS -- I THINK THE PROBLEM YOU HAVE IS A COMBINATION OF TWO
5 THINGS, RIGHT? ONE IS THAT THERE IS THIS -- IT'S MERELY A
6 REFERENCE TO THE AMERICAN ARBITRATION ASSOCIATION RULES. IT'S
7 NOT A CLEAR STATEMENT IN THE CONTRACT ITSELF THAT SAYS THAT
8 WE'RE DELEGATING ARBITRABILITY TO THE ARBITRATOR. THAT'S
9 NUMBER ONE.

10 AND THEN NUMBER TWO, YOU HAVE THE SEVERABILITY
11 PROVISION, WHICH COULD HAVE BEEN WRITTEN MORE CLEARLY TO SAY
12 WHAT YOU'RE SAYING NOW, WHICH IS, BY THIS SEVERABILITY
13 PROVISION, WE'RE NOT CONCEDING THAT THERE'S ANYTHING AMBIGUOUS
14 ABOUT OUR DELEGATION TO THE ARBITRATOR OF THE DECISION TO
15 ARBITRATE WHETHER IT SHOULD BE ARBITRATED, BUT IF A COURT
16 DISAGREES WITH US ABOUT THIS, THE SEVERABILITY PROVISION WILL
17 GOVERN THE COURT'S REVIEW OF THE ARBITRATION PROVISION.

18 SO YOU HAVE KIND OF TWO -- TWO AMBIGUITIES IN THERE
19 WITH RESPECT TO DELEGATION TO THE ARBITRATOR OF THE DECISION
20 WHETHER THE CASE SHOULD BE SUBJECT TO ARBITRATION. AND MAYBE
21 IF YOU ONLY HAD ONE, YOU'D HAVE A STRONGER ARGUMENT, BUT THE
22 TWO IT SEEMS COMBINED -- TO ME, COMBINED, TO DEFEAT YOUR
23 ARGUMENT.

24 **MS. MEYER:** I DON'T WANT TO BELABOR THE POINT, BUT I
25 WILL JUST NOTE, I THINK -- I DON'T KNOW THAT THE QUESTION IS

1 WHETHER OR NOT THE DELEGATION PROVISION IS AMBIGUOUS IS
2 SOMETHING THAT IS A POSSIBLE OUTCOME -- APPROPRIATE OUTCOME
3 UNDER NINTH CIRCUIT PRECEDENT. I THINK THE QUESTION IS: DOES
4 BRENNAN APPLY AND DOES THE REASONING IN BRENNAN APPLY TO
5 CONSUMER CONTRACTS INVOLVING UNSOPHISTICATED CONSUMERS.

6 BUT AS WE SAID, THAT'S NOT WHERE WE'RE AT TODAY.
7 MR. BERK IS NOT AN UNSOPHISTICATED CONSUMER. HIS COUNSEL HAS
8 ESSENTIALLY CONCEDED IN THE MOTION TO DISMISS A PORTION OF THE
9 ARGUMENT THAT HE -- I BELIEVE THEY MENTION HE WAS AN INVESTOR.
10 HE, IN HIS COMMUNICATIONS WITH COINBASE, REPRESENTS HIMSELF AS
11 A REGISTERED INVESTMENT ADVISER. THIS IS NOT, YOU KNOW,
12 SOMEONE WITH NO EXPERIENCE IN BUSINESS TRANSACTIONS.

13 AND SO I THINK ONCE YOU GET TO THAT POINT AND ONCE
14 YOU LOOK AT THE WEIGHT OF THE AUTHORITY, BOTH IN THIS DISTRICT
15 AND IN OTHER CIRCUITS -- THE QUESTION IS WHETHER -- IT'S NOT --
16 (SIMULTANEOUS COLLOQUY.)

17 **MS. MEYER:** -- IS AMBIGUOUS, IT'S WHETHER BRENNAN
18 APPLIES HERE OR NOT.

19 **THE COURT:** THE WEIGHT OF AUTHORITY ON -- THE WEIGHT
20 OF AUTHORITY ON THE QUESTION OF WHETHER --

21 **MS. MEYER:** (INDISCERNIBLE.)

22 **THE COURT:** -- REFERENCE TO THE AMERICAN ARBITRATION
23 ASSOCIATION IS ENOUGH, IS THAT WHAT YOU'RE --

24 **MS. MEYER:** NO, THE WEIGHT OF THE AUTHORITY ABOUT
25 WHETHER THE REASONING IN BRENNAN APPLIES TO CONSUMER CONTRACTS.

1 **THE COURT:** ALL RIGHT.

2 **MS. MEYER:** AND THE GREAT WEIGHT OF THE AUTHORITY IN
3 THIS DISTRICT, WHICH IS CONSISTENT WITH OTHER CIRCUITS AS WELL,
4 IS THAT IT DOES APPLY AND MERE INCORPORATION SO BY REFERENCE IS
5 CLEAR AND UNMISTAKABLE EVIDENCE OF DELEGATION.

6 **THE COURT:** OKAY.

7 **MS. MEYER:** AND SO THAT WOULD JUST BE MY ONE RESPONSE
8 TO YOUR FIRST POINT, YOUR FIRST POINT ABOUT AMBIGUITY. I DON'T
9 THINK THERE IS ANY AMBIGUITY HERE, IF WE AGREE AS A LEGAL
10 MATTER THAT *BRENNAN* EXTENDS TO THIS CASE.

11 **THE COURT:** I UNDERSTAND THAT. OKAY. SO MY SECOND
12 QUESTION ABOUT --

13 **MS. MEYER:** OKAY.

14 **THE COURT:** -- THE MOTION TO COMPEL IS -- MY SECOND
15 THOUGHT -- I'M TRYING TO FIGURE OUT HOW TO HANDLE IT IN LIGHT
16 OF THE MOTION TO DISMISS. IT SEEMS TO ME -- THAT ALTHOUGH THE
17 CLAIMS THEY ARE ARTICULATING, OR TRYING TO ARTICULATE, NOW IN
18 THE CURRENT ITERATION OF THE COMPLAINT ARE NOT -- THEY DO NOT
19 SEEM TO BE CLAIMS THAT ARISE UNDER THE CONTRACT. BUT, OF
20 COURSE, IT'S NOT CLEAR TO ME THAT THEY'VE ADEQUATELY
21 ARTICULATED THEIR CLAIMS, AND SO IT -- ONCE THEY ADEQUATELY --
22 ONCE THEY KIND OF FILL IN THE GAPS IN THE STORY THAT THEY'RE
23 TELLING, MAYBE WE WILL HAVE A BETTER SENSE OF WHETHER THE
24 CLAIMS ARISE UNDER THE CONTRACT OR NOT.

25 BUT IT SEEMS TO ME THAT RIGHT NOW, BASED ON WHAT

1 THEY'VE ARTICULATED, TO THE EXTENT I CAN DISCERN WHETHER THEY
2 ARE CLAIMS THAT ARISE UNDER THE CONTRACT OR NOT, IT SEEMS LIKE
3 THEY DON'T, AND SO IT -- BUT IT -- SO IT SEEMS LIKE THE
4 APPROPRIATE COURSE -- ASSUMING I CONTINUE TO DISAGREE WITH YOU
5 ON THE AMBIGUITY ISSUE THAT WE JUST DISCUSSED, IT SEEMS LIKE
6 THE APPROPRIATE COURSE MIGHT BE TO DENY THE MOTION TO COMPEL
7 BUT WITHOUT PREJUDICE TO RERAISING IT IN RESPONSE TO A NEWLY
8 FILED COMPLAINT, ASSUMING I -- ASSUMING I DISMISS THE COMPLAINT
9 WITH LEAVE TO AMEND.

10 **MS. MEYER:** IF YOUR HONOR IS GOING TO FIND THAT THE
11 CLAIMS AS PLED IN THE FIRST AMENDED COMPLAINT DON'T ARISE UNDER
12 THE CONTRACT, THEN WE WOULDN'T HAVE AN OBJECTION. AND I'M SURE
13 THAT MR. RAGLAND WILL COME UP HERE AND TELL ME IF I'M WRONG.
14 BUT I'M SURE WE WOULDN'T HAVE AN OBJECTION TO FILING ANOTHER
15 MOTION TO COMPEL AFTER A SECOND --

16 **THE COURT:** WELL, I'M NOT EVEN SURE I COULD PREVENT
17 YOU FROM DOING IT, FRANKLY.

18 **MS. MEYER:** FAIR ENOUGH.

19 **THE COURT:** I MEAN, IF I SAID THAT THIS -- IF I SAID
20 THIS COMPLAINT, THE CLAIMS IN THIS COMPLAINT --

21 **MS. MEYER:** RIGHT.

22 **THE COURT:** -- DO NOT ARISE UNDER THE CONTRACT AND --
23 BUT I SAY -- I DISMISS THE COMPLAINT BECAUSE THEY HAVEN'T
24 ADEQUATELY EXPLAINED THE WRONGDOING, AND THEN THEY COME BACK
25 AND THEY INCLUDE A LOT MORE, I WOULD THINK YOU WOULD BE WITHIN

1 YOUR RIGHTS TO SAY, DEPENDING ON WHAT THEY ALLEGE, HEY, LOOK,
2 NOW IT'S CLEAR THAT, YOU KNOW, THESE CLAIMS ARE ARISING UNDER
3 THE CONTRACT.

4 **MS. MEYER:** I AGREE WITH YOU. BUT I THINK IF YOUR
5 HONOR WOULD PERMIT ME, I WOULD LIKE TO TAKE A SHOT AT
6 CONVINCING YOU THAT THE CLAIMS AS CURRENTLY PLEAD DO IN FACT
7 ARISE UNDER THE (INDISCERNIBLE).

8 **THE COURT:** GO.

9 **MS. MEYER:** BECAUSE I THINK THAT IF WE LOOK AT IT,
10 THEY REALLY ARE INEXTRICABLY BOUND TO THE PROVISIONS OF THE
11 CONTRACT.

12 SO I MADE A COUPLE OF NOTES DURING THE MOTION TO
13 DISMISS ARGUMENT, AND I THINK WE CAN GO THROUGH THE WAY THAT
14 PLAINTIFFS CHARACTERIZED THEIR CLAIMS DURING THE ARGUMENT. AND
15 SO ONE OF THE KEY POINTS OF THEIR CLAIM -- OF ALL FOUR CLAIMS
16 IN THE FIRST AMENDED COMPLAINT IS THAT THEY PURCHASED BITCOIN
17 CASH AT A DIFFERENT -- OR THAT MR. BERK PURCHASED BITCOIN CASH
18 AT A DIFFERENT PRICE THAN THE PRICE THAT WAS QUOTED TO HIM.
19 THAT CAN'T BE DETERMINED. IT CAN'T BE RESOLVED BY A FACT
20 FINDER WITHOUT LOOKING AT WHAT BOTH THE USER AGREEMENT AND THE
21 TRADING RULES SAY ABOUT CONVERSION RATES AND PURCHASE PRICES.

22 AND, YOU KNOW, THIS IS A CONCEPT THAT CAME UP IN --
23 IN PARAGRAPH 82 OF THE AMENDED COMPLAINT. AND THEN IF YOU GO A
24 COUPLE OF PARAGRAPHS LATER AND YOU LOOK AT PARAGRAPHS 89 TO
25 91 --

1 **THE COURT:** WAIT. HOLD ON. LET ME PULL THAT BACK
2 UP.

3 **MS. MEYER:** SURE.

4 **THE COURT:** OKAY.

5 **MS. MEYER:** MR. BERK --

6 **THE COURT:** WHAT PARAGRAPHS DID YOU SAY?

7 **MS. MEYER:** PARAGRAPHS 89 TO 91.

8 **THE COURT:** AND THEN WHAT WAS THE FIRST PARAGRAPH?

9 **MS. MEYER:** EIGHTY-TWO. MR. BERK --

10 **THE COURT:** SORRY, GIVE ME ONE QUICK SECOND.

11 **MS. MEYER:** YEAH, SURE.

12 ACTUALLY, LET'S -- YOU KNOW WHAT, LET'S HOLD OFF ON
13 89 TO 91 FOR A, MINUTE BECAUSE I WANT TO -- I WANT TO GET BACK
14 TO THAT. THAT ACTUALLY HAS -- THAT GOES TO A DIFFERENT POINT I
15 WAS GOING TO MAKE.

16 LET'S TALK ABOUT CONVERSION RATE, PURCHASE PRICES,
17 THE PRICE AT WHICH HIS PURCHASE WAS EXECUTED.

18 **THE COURT:** OKAY.

19 **MS. MEYER:** THE CONVERSION IS DEFINED IN SECTION 4.1
20 OF THE USER AGREEMENT.

21 **THE COURT:** WAIT. HOLD ON. LET ME GO BACK TO THE --

22 **MR. RAGLAND:** OKAY.

23 **THE COURT:** -- USER AGREEMENT.

24 WHAT DECLARATION --

25 **MR. RAGLAND:** IT'S THE POLLAK DECLARATION, EXHIBIT 4.

1 **THE COURT:** I KNOW I'VE LOOKED AT IT IN HERE BEFORE.

2 **MR. RAGLAND:** WELL, I HAVE A QUOTE, SO I CAN JUST
3 READ FROM IT --

4 **THE COURT:** GO AHEAD.

5 **MR. RAGLAND:** -- AND THEN I'LL POINT YOU SOMEWHERE
6 ELSE.

7 SO SECTION 4.1 SAYS:

8 "THE CONVERSION RATE MEANS THE
9 PRICE OF A GIVEN SUPPORTED DIGITAL CURRENCY
10 AMOUNT IN TERMS OF FIAT CURRENCY OR OTHER
11 DIGITAL CURRENCY AS QUOTED ON THE COINBASE
12 SITE."

13 AND SO MR. BERK IS MAKING AN ARGUMENT ABOUT THE
14 CONVERSION RATE HE WAS QUOTED. WE HAVE TO LOOK AND SEE, WHAT
15 DOES THAT MEAN, WHAT WAS THE QUOTED CONVERSION RATE AND HOW IS
16 THAT DEFINED BY THE USER AGREEMENT. BUT PERHAPS MORE -- AND
17 GOING ON IN SECTION 4.1, IT SAYS THAT:

18 "AS A CONDITION OF USING COINBASE
19 CONVERSION SERVICES, THE USER MUST ACCEPT THE
20 CONVERSION RATE AS THE SOLE CONVERSION
21 METRIC."

22 SO IS THE CONVERSION RATE THE PRICE MR. BERK IS
23 SAYING HE SAW AT 2,000 OR WAS IT THE PRICE MR. BERK IS SAYING
24 HIS PURCHASE WAS EXECUTED AT 4,200? HOW ARE WE DEFINING
25 CONVERSION RATE? HOW ARE WE LOOKING AT IT? THAT'S GOING TO BE

1 AN IMPORTANT PIECE OF THE RESOLUTION.

2 **THE COURT:** OH, I DON'T KNOW. I THINK WHAT HE'S
3 SAYING IS BECAUSE OF THE WAY THAT THIS WAS BUNGLED, IF IT HAD
4 NOT BEEN BUNGLED, HE WOULD HAVE PUT IN AN ORDER FOR 2,000, HE
5 WOULD HAVE GOTTEN THE PRICE AT 2,000, OR SOMEWHERE THEREABOUTS,
6 BUT BECAUSE THE ROLLOUT WAS BUNGLED, HE PUT IN AN ORDER AT
7 2,000, AND THEN TWO DAYS LATER HE RECEIVED CONFIRMATION OF HIS
8 PURCHASE AT 4,000 PLUS.

9 **MS. MEYER:** EXACTLY. AND HE'S SAYING THAT WAS
10 IMPROPER?

11 **THE COURT:** AND SO IT DOESN'T MATTER WHETHER IT WAS
12 BREACH OF CONTRACT OR NOT. WHAT MATTERS IS THE WAY THEY
13 BUNGLED THE ROLLOUT, AND HAD THEY NOT BUNGLED IT, HE WOULD HAVE
14 GOT -- THERE WOULD HAVE BEEN A DIFFERENT RESULT.

15 **MS. MEYER:** I THINK THAT'S PART OF IT, BUT HE'S ALSO
16 MAKING ALLEGATIONS ABOUT THE FACT THAT COINBASE DIDN'T GO BACK
17 AND CANCEL PENDING CUSTOMER ORDERS ONCE THE PRICE WAS
18 SKYROCKETING. THEY'RE TALKING ABOUT COINBASE'S OBLIGATIONS
19 ABOUT WHAT SHOULD HAVE HAPPENED WITH THOSE PENDING ORDERS AFTER
20 TRADING WAS HALTED.

21 **THE COURT:** I WAS JUST RESPONDING TO YOUR COMMENT
22 WHICH IS --

23 **MS. MEYER:** THAT'S FAIR. THAT'S FAIR.

24 BUT THEN MY NEXT POINT IS THE CONVERSION RATE RULES
25 ARE EXPANDED UPON IN THE GDAX TRADING RULES, AND THE PLAINTIFFS

1 TALK ABOUT THE GDAX TRADING RULES IN THEIR COMPLAINT. THOSE
2 RULES ARE ACTUALLY INCORPORATED INTO THE USER AGREEMENT. IN
3 PART THREE OF THE USER AGREEMENT THEY'RE INCORPORATED BY
4 REFERENCE.

5 AND SO THOSE GDAX RULES ALLOWS USERS TO SET CERTAIN
6 LIMITS --

7 **THE COURT:** THOSE ARE THE RULES THAT THEY ALLEGE WERE
8 CHANGED --

9 **MR. RAGLAND:** EXACTLY.

10 **THE COURT:** -- AFTER THE ROLLOUT?

11 **MR. RAGLAND:** BUT MR. GREEN ATTACHED THE VERSION OF
12 THE RULES THAT HE SAYS WAS IN PLACE ON DECEMBER 19TH, 2017, AS
13 EXHIBIT 1 TO HIS DECLARATION. SO THAT'S IN THE RECORD.

14 AND THOSE RULES ALLOW USERS TO SET CERTAIN LIMITS ON
15 ORDERS. THEY ALLOW THEM TO DEFINE THE AMOUNT AT WHICH THE USER
16 IS WILLING TO PURCHASE DIGITAL CURRENCY. AND SO MR. BERK IS
17 SAYING, WELL, I WOULDN'T HAVE PURCHASED IT AT 4200. BUT WHAT
18 DID THE TRADING RULES SAY ABOUT HOW HE SET UP HIS PURCHASE
19 TRANSACTION? AND WHY WAS THE AMOUNT -- WHY WAS THE PURCHASE
20 ACTUALLY EXECUTED AT THAT HIGHER AMOUNT IF HE DIDN'T AUTHORIZE
21 IT? AND SO THE QUESTION ABOUT HIS INJURY AND WHETHER OR NOT IT
22 WAS AN ACTUAL INJURY IS GOING TO REQUIRE REFERENCE TO AND
23 INTERPRETATION OF THE USER AGREEMENT, THE GDAX RULES.

24 **THE COURT:** I THINK THEY WOULD HAVE THE SAME ANSWER,
25 WHICH IS, NO, IT DOESN'T MATTER WHETHER IT WAS ALL OF --

1 EVERYTHING THAT EVERYBODY DID WAS CONSISTENT WITH THE GDAX
2 RULES, IT'S THAT -- IN OTHER WORDS, IT DOESN'T MATTER WHETHER
3 THERE WAS ROOM FOR THIS TO HAPPEN WITHIN THE GDAX RULES, WHAT
4 MATTERS IS THAT IT WOULDN'T HAVE HAPPENED HAD THEY NOT BUNGLED
5 THE ROLLOUT.

6 **MS. MEYER:** I AGREE THAT'S WHAT THEY WERE GOING TO
7 SAY, BUT I DISAGREE THAT --

8 **THE COURT:** WHY ISN'T THAT THE ANSWER? WHY DOESN'T
9 THAT MEAN WE DON'T NEED TO LOOK AT THE GDAX RULES BECAUSE IT
10 DOESN'T MATTER?

11 **MS. MEYER:** BECAUSE PART OF THE DEFENSE OF THESE
12 CLAIMS IS GOING TO BE: YOU AGREED, YOU AGREED THIS WAS AN
13 APPROPRIATE PRICE AT WHICH YOU WOULD PURCHASE BITCOIN CASH; YOU
14 SAID THIS WAS ACCEPTABLE AND THIS WAS A TRANSACTION IN WHICH
15 YOU WANTED TO ENGAGE.

16 AND SO YOU'VE GOT TO LOOK AT WHAT THOSE RULES WERE AT
17 THE TIME HE MADE HIS PURCHASE. I THINK THERE'S NO WAY AROUND
18 THAT.

19 **THE COURT:** OKAY.

20 **MS. MEYER:** AND SO I WANT TO GO BACK BECAUSE I
21 MENTIONED PARAGRAPHS 89 TO 91, AND I THINK THAT'S IMPORTANT.

22 **THE COURT:** I FINALLY FOUND THE USER AGREEMENT, NOW I
23 GOT TO GO BACK -- HOLD ON.

24 **MS. MEYER:** SORRY.

25 **THE COURT:** GIVE ME ONE SECOND.

1 **MS. MEYER:** THAT'S FINE.

2 **THE COURT:** OKAY.

3 **MS. MEYER:** OKAY. SO WE'VE BEEN TALKING ABOUT
4 NEGLIGENCE CLAIMS. THEY SAID THEY WERE NEGLIGENT BECAUSE THEY
5 SHOULDN'T HAVE HALTED TRADING. WE ARE TALKING ABOUT WHETHER OR
6 NOT THE ROLLOUT AND THE SUBSEQUENT HALTING OF TRADING WAS AN
7 UNFAIR BUSINESS PRACTICE UNDER THE UCL, AND WE'RE TALKING ABOUT
8 WHETHER OR NOT THAT VIOLATED THE CEA. SO THIS HALT OF TRADING
9 IS A REALLY KEY PART OF THE PLAINTIFF'S CASE.

10 **THE COURT:** OKAY.

11 **MR. RAGLAND:** AND THE PLAINTIFFS SAY THE GDAX
12 RULES --

13 **THE COURT:** WHERE ARE YOU NOW?

14 **MR. RAGLAND:** -- ABOUT -- 89 TO 91.

15 **THE COURT:** OKAY.

16 **MR. RAGLAND:** THEY SAY THEY CHANGED THOSE GDAX RULES
17 AFTER THE FACT TO MAKE IT LOOK LIKE THEY COULD HAVE HALTED
18 TRADING.

19 WE'VE GOT TO GO BACK AND LOOK AT WHAT THE GDAX RULES
20 ACTUALLY SAID AT THE TIME THE TRADES WERE EXECUTED TO DETERMINE
21 WHETHER COINBASE AND MR. BERK AND OTHER USERS -- WHAT
22 CONDITIONS DID THEY AGREE TO ABOUT HALTING TRADING.

23 **THE COURT:** OKAY.

24 **MS. MEYER:** BECAUSE IF YOU LOOK AT MR. GREEN'S
25 DECLARATION, EXHIBIT 1, THE GDAX RULES, SECTION 3.4 PROVIDES

1 THAT IN CERTAIN SITUATIONS -- AND THIS IS THE VERSION THAT WAS
2 IN PLACE ON DECEMBER 19TH, 2017, ACCORDING TO MR. GREEN -- THAT
3 IN CERTAIN SITUATIONS COINBASE MAY DISABLE THE ABILITY TO PLACE
4 NEW ORDERS. COINBASE CAN HALT TRADING IN CERTAIN CASES, AND SO
5 IF WE'RE LOOKING -- HOW COULD THIS BE AN UNFAIR BUSINESS
6 PRACTICE, THAT THEY HALTED TRADING, IF BEFORE THE FACT MR. BERK
7 AND COINBASE AGREED THESE WERE THE CONDITIONS UNDER WHICH
8 TRADING WOULD BE HALTED.

9 YOU CAN'T GET AROUND IT. WE'VE GOT TO LOOK AT THE
10 RULES, WE'VE GOT TO LOOK AT THE CONTRACT. WE CAN'T RESOLVE
11 MR. BERK'S UCL CLAIM, OR HIS NEGLIGENCE CLAIM, OR HIS CEA
12 CLAIM, OR HIS NEGLIGENT MISREPRESENTATION CLAIM, FOR THAT
13 MATTER, WITHOUT LOOKING AT WHAT THE RULES -- WHAT THE PARTIES
14 AGREED TO IN ADVANCE.

15 **THE COURT:** OKAY. I UNDERSTAND THE ARGUMENTS.

16 THERE'S JUST ONE -- I DON'T NEED TO HEAR A RESPONSE
17 FROM YOU ON THE ARBITRATION STUFF. THERE'S ONLY JUST ONE OTHER
18 THING I WANTED TO SAY TO YOU ALL. I'M SAYING IT BECAUSE YOU
19 REMIND ME OF HER. I'M FRIENDS WITH -- I'M SORT OF CASUAL
20 FRIENDS WITH A MEMBER OF THE BOARD OF DIRECTORS ON COINBASE. I
21 BELIEVE SHE'S ON THE BOARD OF DIRECTORS ON COINBASE. HER NAME
22 IS KATIE HAUN. AND I HAVE NEVER SPOKEN WITH HER ABOUT COINBASE
23 OR ANY OF THE ACTIVITIES THAT TAKE PLACE ON COINBASE.

24 IN FACT, I DIDN'T EVEN KNOW THAT SHE WAS ON THE BOARD
25 OF DIRECTORS OF COINBASE UNTIL I LOOKED IT UP LAST NIGHT. I

1 KNEW THAT SHE WAS IN THAT WORLD, AND I PUNCHED IT UP AND I
2 LOOKED AT IT, AND I SAID, OH, SHE'S ON THE BOARD OF DIRECTORS
3 OF COINBASE, I BETTER LET THE PARTIES KNOW THIS, BUT SHE -- SO
4 WE'RE, LIKE I SAID, SORT OF CASUAL PROFESSIONAL FRIENDS. I'VE
5 KNOWN HER SINCE ABOUT 2001 WHEN WE WERE BOTH IN D.C. CLERKING
6 AT THE SUPREME COURT. WE'VE OCCASIONALLY KEPT IN TOUCH
7 ABOUT -- PRIMARILY ABOUT PROFESSIONAL MATTERS.

8 LIKE I SAID, WE'VE NEVER TALKED ABOUT COINBASE. I
9 DON'T CONSIDER IT TO BE AN ISSUE. I DON'T CONSIDER IT TO
10 AFFECT MY ABILITY TO ADJUDICATE THIS CASE AT ALL, BUT I THOUGHT
11 I WOULD AT LEAST LET YOU KNOW THAT.

12 AND FOR A MOMENT I THOUGHT IT SEEMED LIKE KATIE HAUN
13 WAS TALKING TO ME, WHICH IS WHAT REMINDED ME OF IT.

14 **MS. GRANT:** WE HAVE NO PROBLEM WITH IT.

15 **THE COURT:** OKAY. SO I'LL TAKE THIS UNDER
16 SUBMISSION. I'LL ISSUE A RULING FAIRLY SHORTLY, I THINK.

17 **MS. MEYER:** THANK YOU, YOUR HONOR. WE DO HAVE A CMC
18 ON CALENDAR FOR OCTOBER 9TH. DO WE WANT TO KEEP THAT?

19 **THE COURT:** OH. YEAH, LET'S -- I WILL TELL YOU NOW
20 MY PRETTY STRONG LEAN IS TO -- AND I WILL GO BACK AND THINK
21 ABOUT ALL OF THIS MORE -- BUT MY FAIRLY STRONG LEAN IS TO DENY
22 THE MOTION TO COMPEL ARBITRATION WITHOUT PREJUDICE TO REFILE
23 IT AND TO GRANT THE MOTION TO DISMISS WITH LEAVE TO AMEND BASED
24 ON WHAT WE'VE DISCUSSED HERE TODAY.

25 BUT I WILL THINK ABOUT IT MORE AND ISSUE A RULING.

1 SO FOR NOW WE CAN GO AHEAD AND VACATE THE CASE MANAGEMENT
2 CONFERENCE.

3 **MS. MEYER:** THANK YOU, YOUR HONOR.

4 **THE COURT:** OKAY. THANK YOU.

5 (PROCEEDINGS ADJOURNED AT 12:13 P.M.)
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CERTIFICATE OF TRANSCRIBER

I CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT
TRANSCRIPT, TO THE BEST OF MY ABILITY, OF THE ABOVE PAGES OF
THE OFFICIAL ELECTRONIC SOUND RECORDING PROVIDED TO ME BY THE
U.S. DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA, OF THE
PROCEEDINGS TAKEN ON THE DATE AND TIME PREVIOUSLY STATED IN THE
ABOVE MATTER.

I FURTHER CERTIFY THAT I AM NEITHER COUNSEL FOR,
RELATED TO, NOR EMPLOYED BY ANY OF THE PARTIES TO THE ACTION IN
WHICH THIS HEARING WAS TAKEN; AND, FURTHER, THAT I AM NOT
FINANCIALLY NOR OTHERWISE INTERESTED IN THE OUTCOME OF THE
ACTION.



JOAN MARIE COLUMBINI

OCTOBER 11, 2018